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Bart Jones, *ICE raids impact: Customers’ fear sending Hempstead Village businesses into free fall*, Newsday (Mar. 14, 2026).....7

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PRELIMINARY STATEMENT

On March 16, this Court ordered Respondents to “advise this Court of the steps that will be taken to ensure that future ICE enforcement actions within the Eastern District of New York shall be conducted in a lawful manner.” (ECF No. 15 at 17). *Amici* LatinoJustice PRLDEF (“LatinoJustice”) and Central American Refugee Center (“CARECEN-NY”) respectfully submit that irrespective of Respondents’ submission, this Court should direct and order them to follow the law. The Court may, for example, enjoin Respondent United States Immigration and Customs Enforcement (“ICE”) from conducting any investigative stop absent specific, articulable facts giving rise to a reasonable suspicion that the individual stopped is subject to removal. It may also enjoin ICE from arresting anyone absent probable cause both that the person is subject to removal and is likely to flee.

Amici respectfully submit this brief to set forth precisely what those abstract legal terms mean on the ground in Nassau and Suffolk County.

INTERESTS OF AMICI CURIAE

A. LATINOJUSTICE PRLDEF

LatinoJustice PRLDEF (“LatinoJustice”) was founded in 1972 as the Puerto Rican Legal Defense and Education Fund. It is a national non-profit civil rights organization that advocates for and defends the constitutional rights of Latinos under the law. For more than five decades, LatinoJustice has worked to advance fair housing, access to education, workplace justice, immigrants’ rights, language rights, criminal justice reform, and voting rights.

LatinoJustice has long had a particular connection to the Long Island Latino community and for more than twenty years has undertaken law reform affirmative litigation to protect Latinos on Long Island, immigrants and non-immigrants alike. LatinoJustice currently represents the family of Marcelo Lucero, who was murdered in a heinous 2008 hate crime in Patchogue, in

a petition pending before the Inter-American Court of Human Rights. In 2010, in *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, LatinoJustice represented two community-based organizations in a challenge to a municipal ordinance in Nassau County targeting day laborers. In *Aguilar v. ICE*, filed in 2007, LatinoJustice represented individuals and class members on Long Island and in Westchester whose homes had been unlawfully entered by ICE agents. LatinoJustice brought *Plaintiffs 1-21 v. Suffolk County Police Department* in 2015 on behalf of twenty-one residents of Suffolk County who had been racially profiled and then robbed by a uniformed SCPD officer. More recently, LatinoJustice secured a \$112 million jury verdict in the EDNY against the Suffolk County Sheriff's Office for unlawfully jailing people at the request of ICE. *See Orellana Castaneda v. Suffolk County*.

LatinoJustice currently represents multiple plaintiffs in two pending lawsuits against the Nassau County Police Department: one challenging NCPD's failure to provide language access for Spanish-speaking residents and another seeking to end its cooperation with federal immigration officers. *See CARECEN v. Nassau County Police Department; Soto v. Ryder*. This May, LatinoJustice will be at the New York State Court of Appeals in the first case to define the scope of New York's Right to Record Act, representing SeanPaul Reyes, a Suffolk County resident known as "Long Island Audit" to his Internet audience. *See Reyes v. City of New York*. Moreover, LatinoJustice has particular expertise in the Fourth Amendment issues here based on its role as co-counsel for the class plaintiffs in *Ligon v. City of New York*, one of New York City's three NYPD "stop-and-frisk" cases.

B. CENTRAL AMERICAN REFUGEE CENTER

Central American Refugee Center ("CARECEN-NY"), founded in 1983, is a 501(c)(3) non-profit organization based in Hempstead, Nassau County, and Brentwood, Suffolk County. For 43

years CARECEN has aimed to empower Long Island immigrants through legal services, community education, and advocacy. We strive to make Long Island a place that welcomes and values immigrants and their contributions. Immigrants represent the new face of Long Island and, with adequate support, will sustain its economic and social vibrancy for decades to come.

At CARECEN, we measure impact by the number of immigrants who access legal, educational, and social services, and measure our impact by the number of new Americans who become full participants in social and economic life through voting, running for public office, buying homes, and opening businesses in our region. CARECEN, which is the largest immigration legal services provider on Long Island, provided legal representation to 1,773 clients, 129 unaccompanied children received access to lawyers, and 486 legal consultations were completed in 2024. Along with the legal services in 2024, 766 clients were assisted by the social work team, 540 students attended classes, and 3,637 community members joined educational workshops.

In 2025, due to the increased presence of ice on long island and the threat of detention and deportation, our rapid response team that provides pro se legal assistance through a self- help model have seen a steady rise in urgent requests for motions for virtual appearances due to fear. We have also increased standby guardianship assistance to ensure families are prepared with emergency plans in the case that adult caretakers are detained and separated from their children.

BACKGROUND FACTS

ICE Officers Appear to Rely on the “Perdomo Factors” when Conducting Stops

In September 2025, the Supreme Court stayed a temporary restraining order that had prohibited ICE officers in the Central District of California from solely considering any of the following four factors, in isolation or combination, when determining whether they had

reasonable suspicion to investigate a person’s immigration status: “1. Apparent race or ethnicity; 2. Speaking Spanish or speaking English with an accent; 3. Presence at a particular location (e.g. bus stop, car wash, tow yard, day laborer pick up site, agricultural site, etc.); or 4. The type of work one does.” *Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 898 (C.D. Cal. 2025) (temporary restraining order stayed by *Noem v. Vasquez Perdomo*, 146 S. Ct. 1 (2025)).

In a lone concurrence to the stay order, Justice Brett Kavanaugh wrote that because Los Angeles County is home to “an extremely high number and percentage of illegal immigrants,” who “tend to gather in certain locations to seek daily work,” and who “often work in certain kinds of jobs, such as day labor, landscaping, agriculture, and construction,” the four factors could form the basis reasonable suspicion there. *Perdomo*, 146 S. Ct. at 3. Kavanaugh cited no sources for these propositions, writing only that “[u]nder this Court’s precedents, not to mention common sense, those circumstances taken together can constitute at least reasonable suspicion of illegal presence in the United States.” *Id.* at 6. Whether or not Justice Kavanaugh is correct about the facts of Los Angeles County, the background demographic statistics of any location are relevant to the totality of the circumstances under a reasonable suspicion inquiry.

The legal impact of the *Perdomo* stay, issued without a majority opinion, did not disturb the fundamental principle that reasonable suspicion requires reviewing the totality of the circumstances in a holistic manner. It has always been the case, for example, that when officers receive a 911 call that a “heavysset, Hispanic male wearing an American flag t-shirt” at a particular location is carrying a gun, they need not ignore that race and location are part of the description. *United States v. Gonzalez*, 111 F. Supp. 3d 416, 425 (S.D.N.Y. 2015). But reporting and court cases suggest that in practice, the government has relied on the Kavanaugh concurrence to conduct warrantless investigative detentions nationwide based solely on the four

Perdomo factors—and sometimes only one or two of them.¹

During an interview with the *Chicago Sun-Times*, for example, Gregory Bovino, the former commander-at-large of the U.S. Border Patrol, cited two *Perdomo* factors—whether people were in “a particular place or location” and “the particular characteristics of an individual, how they look”—when considering the “articulable facts” to support a stop.² Widespread reports that officers have relied primarily on the first *Perdomo* factor—apparent race or ethnicity—began last fall during ICE operations in Chicago,³ Charlotte,⁴ and elsewhere.⁵ And after a careful review of the record evidence before it, the District Court of Minnesota concluded last month that for 23 immigration stops during DHS’s recent Minneapolis operation, “these individuals were stopped based solely on their race or ethnicity.” *Hussen v. Noem*, 26-cv-324, 2026 WL 657936, at *33 (D. Minn. Mar. 9, 2026)

ICE officers have also overtly said that they at times rely on the second factor—speaking Spanish or speaking English with an accent—as a basis for reasonable suspicion. For example, in an incident recorded in January 2026, an ICE agent quoted statutory language before conducting a stop, stating “talking to you, hearing that you have an accent, I have reason to believe you were

¹ The United States government issued a press release in response to the decision stating that “DHS law enforcement will not be slowed down and will continue to arrest and remove the murderers, rapists, gang members, and other criminal illegal aliens that Karen Bass continues to give safe harbor.” Press Release, United States Department of Homeland Security, *DHS Scores Major Victory at Supreme Court*, (Sept. 8, 2025), <https://www.dhs.gov/news/2025/09/08/dhs-scores-major-victory-supreme-court>.

² Interview by Chip Mitchell with Gregory Bovino, WBEZ Reporter, “*Transcript: Gregory Bovino say arrestees in Downtown Chicago chosen based partly on 'how they look,'*” *Chicago Sun-Times* (Sept. 30, 2025) <https://chicago.suntimes.com/2025/09/30/transcript-audio-gregory-bovino-arrestees-downtown-chicago-chosen-how-they-look>.

³ See, e.g., Laura Rodríguez Presa, *Latino U.S. Citizens Racially Profiled by Federal Immigration Agents in Chicago: 'I felt like a Piece of Trash,'* *Chicago Tribune* (Nov. 15, 2025), <https://www.chicagotribune.com/2025/11/15/latino-us-citizens-racially-profiled-immigration-chicago/>.

⁴ See, e.g., Adam Wagner, *Legislative Democrats say Immigration Agents are Profiling in Charlotte operation, causing mistrust*, *WUNC News* (Nov. 18, 2025), <https://www.wunc.org/politics/2025-11-18/legislative-democrats-immigration-agents-profiling-charlotte>.

⁵ Bobbi-Jeanne Misick, ‘*Many people are terrified to come out*’: *Catahoula Crunch closes out its first week*, *Louisiana Illuminator* (Dec. 11, 2025), <https://lailluminator.com/2025/12/11/catahoula-crunch/>.

not born of this country.”⁶ Press coverage of an ICE agent who testified in federal court in December confirmed that for a stop in that Oregon district, “[t]he fact that the occupants were ‘only speaking Spanish’ during the stop seemed to ‘confirm’ there was smuggling or ‘harboring people that are not supposed to be here in the United States.’”⁷ ICE has also relied on the third and fourth factors—where someone is located and the kind of work they do—to target hardware stores⁸ and landscaping businesses⁹ where officers assume day laborers gather.

ICE Has Been Relying on the Perdomo Factors to Conduct Stops on Long Island

Reporting and recent habeas petitions granted in this district suggest that ICE has also been relying on the *Perdomo* factors as part of its ongoing daily immigration enforcement operations on Long Island, starting with locations and places of work. Last fall saw large-scale ICE raids in the parking lots of hardware home improvement stores in the area.¹⁰ A recently-granted habeas petition began as such an encounter, when ICE surrounded and arrested a man shortly after he entered the parking lot of a Home Depot on Long Island.¹¹

ICE has also targeted business locations that cater to Spanish-speaking customers. According to a *Newsday* article from earlier this month, businesses in downtown Hempstead have had to lay off workers and are on the verge of going bankrupt because the consistent

⁶ See, CNN (@cnn), INSTAGRAM (Jan. 17, 2026), <https://www.instagram.com/reel/DTn1EDogRdR/>

⁷ Sam Levin, *ICE agents reveal daily arrest quotas and surveillance app in rare court testimony*, The Guardian (Mar. 13, 2026), <https://www.theguardian.com/us-news/2026/mar/13/ice-agent-court-testimony-oregon>. The transcript for the hearing, held on December 18, 2025, is not publicly available. See *CLEAR Clinic et al. v. Noem*, No. 6:25-cv-1906, ECF No. 93, (D. Or., filed Dec. 18, 2025).

⁸ Patrick Filbin, *A Chicago High Schooler Had Just Returned From Chemotherapy. Then ICE Arrested Her Father*, Block Club Chicago (Oct. 21, 2025), <https://blockclubchicago.org/2025/10/21/a-chicago-high-schooler-had-just-returned-from-chemotherapy-then-ice-arrested-her-father/>.

⁹ Neil Steinberg, *Landscapers hit hard by ICE blitz, ‘accused of the crime of working,’* Chicago Sun-Times (Nov. 21, 2025), <https://chicago.suntimes.com/columnists/2025/11/21/operation-midway-blitz-ice-landscapers-human-impact>.

¹⁰ Emma Prashad, *Fear on Long Island surges as ICE raids rise*, Long Island Advocate (Dec. 22, 2025), <https://longislandadvocate.com/fear-on-long-island-surges-as-ice-raids-rise/>.

¹¹ See *Gonzalez Guardado v. Maldonado*, No. 1:26-cv-1170, ¶¶ 13–15 ECF No. 1-2, (E.D.N.Y. filed Feb. 27, 2026).

presence of ICE officers scares off customers, regardless of immigration status.¹² Community fear has driven attendance down at some schools by up to 25 percent following what appear to be arrests of people initially stopped principally due to their physical appearance.¹³

Recent habeas cases also suggest that officers have been stopping people on Long Island because they look Latino. *See Padilla Molina v. DeLeon*, 25-cv-06526, 2025 WL 3718728, at *1 (E.D.N.Y. Dec. 23, 2025) (ICE investigated Latino driver’s immigration status after an unexplained car stop). At minimum, as was done in this case, they appear to be stopping people who resemble a Latino target, only to investigate immigration status even after that person confirms they are someone else. *See, e.g., Crespo Tacuri v. Genalo*, 25-cv-06896, 2026 WL 35569, at *1 (E.D.N.Y. Jan. 6, 2026) (ICE conducted traffic stop because driver “matched the description of another individual” then detained him after he showed a New York driver’s license proving his identity); *R.P.L. v. Maldonado*, 25-cv-6886, 2025 WL 3731864, at *1 (E.D.N.Y. Dec. 26, 2025) (after “a records check confirmed that Petitioner was not their original target, ICE agents arrested him anyway”); *Sanchez Atz v. Noem*, 26-cv-00214, 2026 WL 320238, at *1 (E.D.N.Y. Feb. 6, 2026) (person investigated because he matched physical description of third-party target). These actions violate the Fourth Amendment.

Long Island is Home to a Long-Established Latino Community and a Robust Immigrant Community: The Vast Majority of Both are Not Subject to Removal

According to the U.S. Census, as of 2024, 1,392,438 people lived in Nassau County¹⁴

¹² Bart Jones, *ICE raids impact: Customers’ fear sending Hempstead Village businesses into free fall*, *Newsday* (Mar. 14, 2026), <https://www.newsday.com/long-island/nassau/hempstead-village-economic-impact-ice-raids-h0o1gd2p>.

¹³ Bart Jones and Randee Daddona, *ICE arrests 3 in Greenport, and a quarter of students not in schools amid activity, officials say*, *Newsday* (Feb. 4, 2026), <https://www.newsday.com/long-island/ice-arrests-students-greenport-cq38hkv8>.

¹⁴ U.S Census Bureau, *QuickFacts: Nassau County, New York* (2024), <https://www.census.gov/quickfacts/fact/table/nassaucountynewyork/PST045224>.

while 1,535,909 lived in Suffolk County.¹⁵ Of this population of just under three million, a relatively large proportion of people—550,000, or 19%—are immigrants, the vast majority of whom are United States citizens, legal permanent residents, or holders of some other authorization to legally be in this country.¹⁶ Many of these immigrants, and their children, continue to speak heritage languages with their families: more than 30 percent of the residents of Nassau County¹⁷ and almost a quarter of those in Suffolk County¹⁸ speak a language other than English at home. That is, there are more people who speak a language other than English at home than there are total immigrants of any status on Long Island.

About 21% of the people on Long Island identify as Latino,¹⁹ slightly more than the national average of 20%.²⁰ This population is not coextensive with the immigrant community. There are hundreds of thousands of Latino Long Islanders born in the United States, just as there are tens of thousands of immigrants on Long Island from nations that are not predominantly Latino. The Suffolk County Language Access plan gives a sense of the region’s linguistic diversity by providing government services in Spanish, Haitian Creole, Polish, Portuguese, Chinese, and Italian.²¹

Only a small fraction of Long Island’s immigrants may be subject to removal. According to the Migration Policy Institute, as of 2023 there were only 56,000 undocumented residents in

¹⁵ U.S. Census Bureau, QuickFacts: Suffolk County, New York (2024),

<https://www.census.gov/quickfacts/fact/table/suffolkcountyny/HCN010222>.

¹⁶ Anthony Capote and David D. Kallick, *Immigrants in the Long Island Economy: Overcoming Hurdles, Yet Still Facing Barriers*, Immigration Research Initiative (June 6, 2023), <https://immresearch.org/publications/longisland/>.

¹⁷ Nassau Census, *see* fn. 15.

¹⁸ Suffolk Census, *see* fn. 16.

¹⁹ U.S. Census Bureau, *Selected Characteristics of the Native and Foreign-Born Populations*, American Community Survey Tables, ACS 1-Year Estimates Tables, Table S0501 (2023),

https://data.census.gov/table/ACSST1Y2023.S0501?t=Populations+and+People&g=040XX00US06_050XX00US06037,06059,06065,06071,06079,06083,06111,36059,36103&y=2023&moe=false&tp=false

²⁰ U.S. Census Bureau, QuickFacts: United States (2024),

<https://www.census.gov/quickfacts/fact/table/US/RHI725224>

²¹ Suffolk County, *Language Access Plan*, <https://www.suffolkcountyny.gov/Departments/Social-Services/Language-Access-plan>.

Nassau County²² and 66,000 in Suffolk County.²³ In percentage terms, just four percent of the population of Long Island is subject to removal. And these people have lived here for a long time. Fifty percent of the people subject to removal in Nassau County²⁴ and 45 percent of those subject to removal in Suffolk County²⁵ have lived in the United States for over 20 years; nearly three-quarters have lived here more than ten.²⁶

ARGUMENT

I. This Court May Order Broad Post-Release Relief in Habeas Via the All Writs Act

A. Habeas Corpus is a Flexible Remedy that Permits Relief Beyond Simply Release

This Court may order broad-based relief in a Habeas Corpus action. *See U. S. ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125 (2d Cir. 1974) (“To say that the precise provisions of Rule 23 do not apply to habeas corpus proceedings, however, is *toto caelo* different from asserting that we do not have authority to fashion expeditious methods of procedure in a specific case.”) Injunctions against the agency that unlawfully detained someone, even after the person has been released, are commonplace. *See, e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 170 (W.D.N.Y. 2025) (ordering that a person not in custody be provided an “opportunity to prepare for an orderly departure.”)

So long as the legal questions pertain to the core concerns of habeas—unlawful detention—the statute “does not deny the federal courts power to fashion appropriate relief other than immediate release.” *Peyton v. Rowe*, 391 U.S. 54, 66–67 (1968) (collecting cases). *See also Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (“Regardless of whether the detainees formally

²² Migration Policy Institute, *Profile of the Unauthorized Population: Nassau County, NY* (2023), <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/36059>.

²³ Migration Policy Institute, *Profile of the Unauthorized Population: Suffolk County NY* (2023), <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/county/36103>.

²⁴ Nassau MPI.

²⁵ Suffolk MPI.

²⁶ *Id.*

request release from confinement, because their claims for relief ‘necessarily imply the invalidity’ of their confinement and removal under the Alien Enemies Act, their claims fall within the ‘core’ of the writ of habeas corpus.”)

Questioning the legality of an initial seizure was fundamental to the operation of the writ as early as the sixteenth century. As one scholar explains, “While the writ was ostensibly limited to ensuring that the committing court had jurisdiction, it in fact ensured that power was exercised in conformity with controlling statutes and the common law.” Jonathan L. Hafetz, *The Untold Story of Noncriminal Habeas Corpus and the 1996 Immigration Acts*, 107 Yale L.J. 2509, 2522 (1998). The framers understood that the purpose of habeas was “to prevent the federal government from imposing severe restraints upon individuals without opportunity for collateral judicial review.” *Developments in the Law—Federal Habeas Corpus*, 83 Harv. L. Rev. 1263, 1267 (1970). The fact that this action is proceeding in habeas—and the fact that this Court has already ordered Petitioner released—pose no bar to the Court ordering further relief.

B. The All Writs Act Permits Issuing Relief Here

The All Writs Act²⁷ “invests a court with a power essentially equitable.” *Clinton v. Goldsmith*, 526 U.S. 529, 537 (1999). That power includes the traditional powers of equity, including issuing injunctions. See Michigan Law Review, *The All Writs Statute and the Injunctive Power of a Single Appellate Judge*, 64 Mich. L. Rev. 324 (1965) (tracing the history of the All Writs Act to the Judiciary Act of 1789 and providing examples of its application in various contexts). Of course, courts must “tailor the scope of the remedy to fit the nature and extent of the constitutional violation.” *Hills v. Gautreaux*, 425 U.S. 284, 293–94 (1976) (cleaned

²⁷ The Act states that “the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a).

up). While the scope of an injunction must therefore be limited, the circumstances under which a Court may issue an injunction pursuant to the All Writs Act are not. A Court may enjoin a party under the Act *sua sponte*, see *Matter of Hartford Textile Corp.*, 613 F.2d 388, 390 (2d Cir. 1979) and under certain conditions may even consider an *ex parte* request for an injunction. See *United States v. Gerace*, 21-cv-2419, 2023 WL 3243477, at *3 (2d Cir. May 4, 2023) (“Nor do we find that the district court abused its discretion in reviewing the injunction request *ex parte*.”).

This Court may therefore issue injunctive relief as long as it is tailored to remedy Constitutional violations. And, of course, it has already exercised this power by ordering Respondents to advise it of the steps they have taken to comply with the Constitution. (ECF No. 15) Should the Court find those steps inadequate—or should it merely wish to ensure that Respondent does what it promises—it can and should do more.

II. Immigration Officers May Not Investigate People Absent Reasonable Suspicion That They are Subject to Removal Nor Arrest Them Without Probable Cause That They are Subject to Removal and Likely to Flee.

A. Even Brief Investigative Detentions Must be Supported by Specific Articulate Facts that Support Reasonable Suspicion Given the Totality of the Circumstances

In 1968, the Supreme Court established the “reasonable suspicion” standard for seizures that fall short of an arrest: “in 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.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968).²⁸ Courts have since applied the standard to roving immigration patrols. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). In either case, the “reasonable suspicion” standard is the same—the difference is what officers need reasonable suspicion *of*. Police officers need reasonable suspicion that a

²⁸ See, e.g., Twenty-Second Report of the Independent Monitor, *Underreporting of Terry Stops by the NYPD*, (ECF No. 558-1, in *Ligon v. City of New York*, No. 12-cv-2274 (S.D.N.Y. Oct. 7, 2024).

person is engaged in criminal conduct to conduct a stop, while immigration authorities require reasonable suspicion that a person is subject to removal to investigate.

While the reasonable suspicion standard is lower than the probable cause threshold required for arrest, neither standard is “readily, or even usefully, reduced to a neat set of legal rules.” *Illinois v. Gates*, 462 U.S. 213, 232 (1983). Instead, the investigation is holistic: courts must “balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” *United States v. Place*, 462 U.S. 696, 703 (1983). Reasonable suspicion may be lost once an investigation continues in time: “The length of the detention of respondent’s luggage alone precludes the conclusion that the seizure was reasonable in the absence of probable cause.” *Id.* at 709. The standard thus operates on a sliding scale—the more intrusive the stop, the greater level of suspicion required for that stop to be “reasonable.”

Therefore, “to satisfy the reasonableness standard, officers conducting stops on less than probable cause must employ the least intrusive means reasonably available to effect their legitimate investigative purposes.” *United States v. Newton*, 369 F.3d 659, 674 (2d Cir. 2004) (cleaned up). And the intrusion of even a brief investigative stop is real and significant. In 1977, the Southern District of New York recognized the intrusion of being “suddenly confronted by INS officers who have just driven up in an automobile, left the car and directly approached, and immediately queried as to his nationality.” *Marquez v. Kiley*, 436 F. Supp. 100, 113-14 (S.D.N.Y. 1977). It issued a declaratory judgment that immigration “officials may approach persons to inquire into their citizenship status only on a reasonable suspicion based on specific articulable facts, that the person may be an alien who is illegally in the country,” even though it concluded that the stops of the named plaintiffs complied with the Fourth Amendment. *Id.* at 114.

The Second Circuit recently reiterated the definition of reasonable suspicion and added that, “In assessing reasonable suspicion, courts look at the totality of the circumstances through the eyes of a reasonable and cautious police officer on the scene, whose insights are necessarily guided by his experience and training. Courts do not, however, merely defer to police officers’ judgment.” *United States v. Walker*, 965 F.3d 180, 186 (2d Cir. 2020), citing *United States v. Wallace*, 937 F.3d 130, 138 (2d Cir. 2019).

In this circuit, “race, when considered by itself and sometimes even in tandem with other factors, does not generate reasonable suspicion for a stop.” *United States v. Swindle*, 407 F.3d 562, 569–70 (2d Cir. 2005). Even when officers are provided a photograph of a criminal suspect, a stop may be illegal when it is “based on the photograph—black male, medium-to-dark skin tone, glasses, facial hair, and long hair” because it is a “description [that] fit[s] too many people to constitute sufficient articulable facts on which to justify a forcible stop.” *Walker*, 965 F.3d at 187. Reasonable suspicion cannot be transferred to someone who looks like the original target but proves he is not, or to the passengers of a car when officers have the right to stop the driver. *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 907 (D. Ariz. 2013), *aff’d*, 784 F.3d 1254 (9th Cir. 2015) (holding investigating a passenger “without determining whether there is reasonable suspicion with respect to the individual occupants” violates the Fourth Amendment). What comprises reasonable suspicion depends on all the facts of the stop, including the time, place, and surrounding circumstances. As the Supreme Court has written, “[w]e think it quite reasonable that a driver’s slowing down, stiffening of posture, and failure to acknowledge a sighted law enforcement officer might well be unremarkable in one instance (such as a busy San Francisco highway) while quite unusual in another (such as a remote portion of rural southeastern Arizona).” *United States v. Arvizu*, 534 U.S. 266, 275–76 (2002).

A series of cases that came through the Ninth Circuit based on challenges to roving

immigration patrols emphasized the importance of demographic context when considering reasonable suspicion. The Supreme Court rejected pure racial profiling in *Brignoni-Ponce* but entertained the possibility that the totality of the circumstances could include whether any person has “the characteristic appearance of persons who live in Mexico,” including not merely ethnic appearance but also someone’s “mode of dress and haircut.” *United States v. Brignoni-Ponce*, 422 U.S. at 885. In the 50 years since, courts have emphasized that any consideration of appearance must take demographic context into account. And demographic context often renders ethnic appearance of no value. Twenty-five years after *Brignoni-Ponce*, the Ninth Circuit recognized that given the increase in the Latino population of California, “Hispanic appearance is of little or no use in determining which particular individuals among the vast Hispanic populace should be stopped by law enforcement officials on the lookout for illegal aliens.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1134 (9th Cir. 2000). The District of Arizona later held that the demographics of Maricopa County rendered apparent ethnicity of no value in determining a person’s immigration status. *Melendres*, 989 F. Supp. 2d at 896–97. In 2006 the Supreme Court considered the totality of the circumstances and found that a “group’s proximity to the border, apparent ethnicity, inability to speak English, and appearance as being a work crew” did not add up to reasonable suspicion, though each factor was relevant. *United States v. Manzo-Jurado*, 457 F.3d 928, 940 (9th Cir. 2006).

To read Justice Kavanaugh’s concurrence—even accepted on its own terms—as endorsing the proposition that any, or even all, of the four *Perdomo* factors automatically provide reasonable suspicion would improperly reduce the reasonable suspicion inquiry to a “neat set of legal rules.” *Gates*, 462 U.S. at 232. Instead, the Fourth Amendment requires courts to take the totality of the circumstances into account when considering whether an officer had reasonable

suspicion for any given stop. And on Long Island, those circumstances include the demographic data set forth above: the region is home to a large Latino community (many but by no means all of whom are immigrants), a large immigrant community (many but by no means all of whom are Latino), a large community of people who speak a language other than English at home (many of whom were born in the United States), and a very small number and percentage of people who are subject to removal.

B. Officers Must have Probable Cause that Someone is Removable and that the Person is Likely to Flee Before Arresting Them.

Federal immigration officers are empowered to arrest a person if they have “reason to believe” that the person is an alien subject to removal “and is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2). Federal courts have interpreted the “reason to believe” language of section (a)(2) to require probable cause for an arrest and emphasized that the “likely to escape” provision is essential. *See Arizona v. United States*, 567 U.S. 387, 408 (2012) (striking down a state law that removed the likely to escape requirement); *see also Contreras v. United States*, 672 F.2d 307, 309 (2d Cir. 1982) (finding that the “likely to escape” prong was satisfied by someone’s “attempt to evade custody.”)

As noted above, this case is one of several recent cases in which officers stopped someone because they looked like a purported target, then continued to investigate after the person proved his identity. In the Second Circuit, a mistaken identity arrest is not a Constitutional violation only if “(1) the police had probable cause to arrest the person sought; and (2) the arresting officer reasonably believed that the arrestee was that person.” *Brown v. City of New York*, No. 10-cv-5229, 2013 WL 3245214, at *9 (E.D.N.Y. June 26, 2013) (internal citations omitted). Once the person who is being investigated shows that he is not the person sought, the investigation is over, whether the person proved their identity by providing a “valid

work authorization issued by USCIS,” a foreign passport, or a New York drivers’ license. (ECF No. 15 at 5). Neither reasonable suspicion nor probable cause is transferrable to someone who looks like, but is shown not to be, the original target. *See Walker*, 965 F.3d at 187. The record in this case—as was the situation in a number of recently-filed habeas petitions in this district—does not suggest that immigration authorities made any effort to determine whether Mr. Sanchez Alfaro was likely to escape. *See Transcript of Proceedings at 10:21–13:9*, (E.D.N.Y. Feb 28, 2026).

III. This Court May Enjoin Respondents from Violating the Fourth Amendment.

A. This Court May Order Respondents To Consider the Demographics of Long Island When Evaluating Whether Reasonable Suspicion Exists for a Stop.

Reasonable suspicion is a holistic examination in which officers must take into account “both the content of information possessed by police and its degree of reliability.” *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990) (cleaned up)). And while officers may to some degree rely on their “common sense” (for example, when concluding that a person driving a vehicle is the licensed owner of that vehicle), that phrase is limited to information that is “accessible to people generally, not just some specialized subset of society.” *Kansas v. Glover*, 589 U.S. 376, 384 (2020). As the District of Arizona noted after a three-week trial in which a county sheriff claimed the right to investigate the immigration status of people waiting in a church parking lot where day laborers congregated, “the idea that day laborers are usually unauthorized aliens is unsupported by any statistics presented at trial, and, as discussed above, is typically compounded with an unconstitutional association between work status and race.” *Melendres*, 989 F. Supp. 2d at 909.

Amicus therefore respectfully requests that this Court exercise its authority and order Respondents to follow the Constitution by always considering the specific demographic profiles of Nassau and Suffolk Counties as part of the totality of the evidence in any holistic

determination about reasonable suspicion to stop a person and investigate that person's immigration status.

B. This Court Should Direct Respondents to Consider both Whether Probable Cause Exists that Someone is Removable and that the Person is "Likely to Flee" before Arresting that Person

Likewise, this Court should direct Respondents to abide by the Fourth Amendment when arresting people. That means requiring officers to have probable cause *both* that the person they plan to arrest is subject to removal *and* that the person is "likely to flee" before taking that person into custody. *See Castañon Nava v. Dep't of Homeland Sec.*, 806 F. Supp. 3d 823, 843 (N.D. Ill. 2025) (undocumented status alone "does not provide probable cause that the employees were likely to flee before a warrant could be obtained.") (collecting cases). As this Court has already found, officers here made no additional effort to determine whether Petitioner was "likely to escape" and had they done so "[n]o twist of logic or sophistry can transform him into a potential escapee." (ECF No. 15 at 10). As noted above, it appears to be ICE policy, at least on Long Island, to ignore the second requirement of Section 1357(a)(2), in clear violation of the United States Constitution.

CONCLUSION

For the reasons stated above, amici LatinoJustice PRLDEF and Central American Refugee Center respectfully request that this Court issue an injunction pursuant to the All Writs Act enjoining Respondents from violating the Fourth Amendment. Specifically, that injunction should require that any federal immigration officers conducting immigration patrols:

- 1) Consider, when determining whether they have reasonable suspicion to stop someone and investigate that person's immigration status in Nassau or Suffolk County, the following four factors:
 - a. Nassau and Suffolk County are home to a significant Latino population, made

- up of immigrants and non-immigrants alike;
- b. Nassau and Suffolk County are home to a large population of immigrants, from both primarily Latino and primarily non-Latino countries, the vast majority of whom are not subject to removal;
 - c. A significant portion of the population of Nassau and Suffolk Counties speak a language other than English at home, including both immigrant and non-immigrant households; and
 - d. A very small number and a very small fraction of the people who live in Nassau and Suffolk County are subject to removal.
- 2) Release any person who has been stopped based upon suspicion of being a target once that person proves he or she is not the target, regardless of whether that person also provides evidence of immigration status.
- 3) Refrain from making custodial arrests without a warrant absent probable cause that:
- a. The person is subject to removal, *and*
 - b. The person is likely to flee.

Respectfully submitted,

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