Reasonable Suspicion or Racial Presumption? Noem v. Vasquez Perdomo and the Judicial Sanctioning of Racial Profiling in America

By Chelsea Chen

A shaky camera films officers wearing bulletproof vests and masks to cover all but their eyes. They move with striking efficiency, closing in on their target in seconds. Often, one can hear the question, “Were you born here?”—a demand that seems less like a genuine inquiry than a ritualized assertion of authority. Almost invariably, the answer is ignored.

Over the past several months, countless social media posts depicting Americans being stopped, harassed, and detained have circulated widely online—evidence of the aggressive detentions and hostile immigration stops that have become a hallmark of President Trump’s mass-deportation strategy and broader immigration agenda. Since taking office in 2024, the President has pledged to rid America of the “worst of the worst,”[1]—referring to undocumented immigrants who have come to the United States illegally and are committing crimes or posing danger to American citizens. The agenda is nothing short of extreme. Stephen Miller, advisor to the United States Department of Homeland Security (DHS), set a goal for U.S. Immigration and Customs Enforcement (ICE) agents to perform a daily minimum of 3,000 arrests, touting, “President Trump is going to keep pushing to get that number up higher each and every single day.”[2]

In pursuit of their mission, the administration has begun deploying ICE agents in major U.S. cities: most recently, Portland, Chicago, and Washington D.C. Yet despite the thousands of arrests resulting from these operations, ICE statistics raise significant concerns. As of June 29, 57,861 individuals were detained in ICE custody; 41,495 of whom—approximately 71.7 percent—had no criminal convictions.[3] Such a disparity between ICE’s stated mission and its outcomes raises critical questions about the legal and procedural criteria governing the organization’s practices.

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[1] “CNN.com - Transcripts,” *CNN*, 2025, https://transcripts.cnn.com/show/acd/date/2025-07-03/segment/01.
[2] Ibid.
[3] Melissa Goldin, “Trump Says He’s Deporting ‘Worst of the Worst.’ Data Tells a Different Story,” *AP News*, July 12, 2025, https://apnews.com/article/fact-check-trump-immigration-crime-ice-criminal-dangerous-violent-99557d9d68642004193a9f4b7668162e.

This article aims to clarify and evaluate the reasoning the Court has offered in the 2025 Supreme Court case *Noem v. Vazquez Perdomo* through a close synthesis of Justice Kavanaugh's concurrence and Justice Sotomayor's dissent. In doing so, it supports the contention that ICE's practices are grounded in a fundamentally flawed and racially motivated framework—one that enables marginalized individuals to be stopped, questioned, and taken into custody without meaningful legal justification.

In June 2025, the DHS extended its mass deportation effort to Los Angeles. They detained thousands of people in a search for illegal immigrants, prompting Judge Frimpong of the Central District of California to evaluate the legality of their stops and detentions in early July. Frimpong was presented with what she ruled as, "ample evidence that seizures occurred based solely upon the four enumerated factors" which include "(1) apparent race or ethnicity, (2) speaking Spanish or speaking English with an accent; (3) presence at a particular location; or (4) the type of work one does"[4] and thus issued a temporary restraining order preventing ICE from performing arrests and investigative stops on these accounts.

On September 8th, the Supreme Court stayed Judge Frimpong's order, reversing the Ninth Circuit's determination and allowing ICE agents to continue their practice of stopping and detaining individuals on the basis of superficial profiling.[5] The case, *Noem v. Vazquez Perdomo*, was resolved on the Court's "shadow docket"—its emergency calendar through which cases are decided rapidly, without oral argument, full briefing, or substantive explanation. Because the Court issued no majority opinion, the underlying reasoning behind the stay remains largely unknown. As a result, the only available glimpse into the Court's thinking comes from Justice Brett Kavanaugh's brief, non-precedential concurrence. The absence of a majority opinion necessarily limits the scope of this analysis: while the Court's outcome has immediate and significant consequences, any assessment of the Court's rationale must rely almost entirely on Kavanaugh's writing.

The Court's choice to proceed through the shadow docket also demands attention. Shadow docket rulings are typically reserved for situations in which the Court believes

[4] *Pedro Vasquez Perdomo et al. v. Kristi Noem et al.*, No. 25A169 (D.S.D. 2025), https://caselaw.findlaw.com/court/us-dis-crt-cd-cal/117475603.html.
[5] *Noem v. Vasquez Perdomo*, No. 25A169, 606 U.S. ___ (U.S. Sept. 8, 2025), https://www.supremecourt.gov/opinions/24pdf/25a169_5h25.pdf.

immediate intervention is necessary, yet they have increasingly been used to decide high stakes, politically charged cases without the transparency of the ordinary merits process. In this instance, the Court's use of the shadow docket allowed it to intervene swiftly in an ongoing dispute over immigration enforcement while avoiding public scrutiny of the justices' individual positions. The opacity is convenient: by issuing a stay without explanation, the majority insulated itself from having to articulate or defend a legal justification for permitting continued reliance on what lower courts had described as racialized or superficial profiling practices[6]. The procedural choice not only shapes the substance of the Court's intervention, but also reflects a broader trend in which the shadow docket enables the Court to wield significant power with minimal accountability.

Kavanaugh's concurrence rests upon two independent grounds for reversal. First, he draws on the precedent set by *The City of Los Angeles v. Lyons* and argues that the plaintiffs lack Article III standing to seek broad, forward-looking injunctive relief. In the 1983 *Lyons* decision, the Court struck down a lower court's injunction to ban the Los Angeles Police Department's use of chokeholds. Essentially, they reasoned that just because Lyons had been choked once did not mean that there was "a real and immediate threat"[7] that he would be held in a chokehold again. As in *Lyons,* the plaintiffs in *Noem* allege past unlawful treatment, but cannot show "a real and immediate threat"[8] of being stopped again. Though they may have grounds to seek damages for past harm, Justice Kavanaugh argues that they do not have enough to create a sweeping injunction regulating ICE conduct.

Justice Kavanaugh then goes on to defend the legality of ICE's investigative stops under the Fourth Amendment, which prohibits unreasonable search and seizure but allows for law enforcement officers to briefly detain individuals for questioning when they have "reasonable suspicion"[9] Here, his core argument comes to light:

> Whether an officer has reasonable suspicion depends on the totality of the circumstances. Here, those circumstances include: that there is an extremely high number and percentage of illegal immigrants in the Los Angeles area; that those individuals tend to gather in

[6] *Pedro Vasquez Perdomo et al. v. Kristi Noem et al.*, No. 25A169 (D.S.D. 2025).
[7] *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983).
[8] Ibid.
[9] Brett Kavanaugh, concurring in *Noem v. Vasquez Perdomo*, No. 25A169, slip op. at 1 (U.S. Sept. 8, 2025),

> certain locations to seek daily work; that those individuals often work in certain kinds of jobs, such as day labor, landscaping, agriculture, and construction, that do not require paperwork and are therefore especially attractive to illegal immigrants; and that many of those illegally in the Los Angeles area come from Mexico or Central America and do not speak much English.[10]

Justice Kavanaugh further draws on the 1973 case *United States v. Brignoni-Ponce*, in which California border patrol agents stopped Felix Humberto Brignoni-Ponce's car because he appeared to be "of Mexican descent."[11] While *Brignoni-Ponce* decided that the Fourth Amendment prohibits border patrol agents from stopping individuals based solely on their appearance,[12] it set in stone the precedent of immigration stops based on "reasonable suspicion"—of which Kavanaugh contends the ICE agents had, based on the above mentioned arbitrary linguistic, workplace, and demographic factors. Kavanaugh closes his discussion of *Brignoni-Ponce* by writing, "Under 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."[13]

Justice Kavanaugh's argument is deeply flawed, relying on assumptions that overlook real-world impacts and sidestep concerns raised by the lower courts. Justice Sotomayor, joined by Justices Kagan and Jackson, expresses her disagreement powerfully in her dissent.

Firstly, Sotomayor argues that to apply *Lyons* as precedent for this case wholly ignores the gaping situational differences. *Lyons*' case involved the practice of an individual police officer. *Noem* involves the practices of an entire federal agency. ICE immigration stops are an ongoing practice, and the criteria for conducting these stops are not as much based on individual belief as they are agency standard. In August, the CATO Institute reported that of ICE's over 16,000 street arrests (who had no criminal convictions, charges, or removal orders), about 90 percent of them were immigrants from Latin America.[14] There is more than a coincidental pattern here; there is a systematic operation. To assert that there is no "real and immediate

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[10] Ibid., 5.
[11] *United States v. Brignoni-Ponce*, Oyez. Accessed October 24, 2025. https://www.oyez.org/cases/1974/74-114.
[12] *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)
[13] Brett Kavanaugh, concurring in *Noem v. Vasquez Perdomo*, No. 25A169, slip op. at 6 (U.S. Sept. 8, 2025),
[14] David J. Bier, "One in Five ICE Arrests Are Latinos on the Streets with No Criminal Past or Removal Order," *Cato Institute*, August 5, 2025, https://www.cato.org/blog/1/5-ice-arrests-are-latinos-streets-no-criminal-past-or-removal-order.

threat" of individuals being stopped again on the basis of race or language is untenable—the threat has already become action, and it has already reoccurred.

As for *Brignoni-Ponce,* with closer investigation, it can be argued that the case actually supports Judge Frimpong's order more than it upends it. *Brignoni-Ponce* held that "Mexican ancestry" alone does not constitute reasonable suspicion for immigration stops because "large numbers of native-born and naturalized citizens have the physical characteristics identified with Mexican Ancestry."[15] Furthermore, the court found that "reasonable suspicion" requires specific characteristics or factors related to a vehicle or individual. These include "the driver's behavior," whether the vehicle contains "an extraordinary number of passengers," or whether the officer notices "persons trying to hide."[16] These are sensical factors that plausibly indicate suspicious behavior or illegality. They are not factors based on "apparent race or ethnicity, speaking Spanish or English with an accent, location, and type of work" which both the District Court and Sotomayor contend, are "no more indicative of illegal presence in the country than of legal presence."[17] Historically, reasonable suspicion requires individualized, behavior-based indicators rather than demographic generalizations, even when aggregated. Thus, Kavanaugh's definition of reasonable suspicion (one barely supported by the precedent of *Brignoni-Ponce*) reveals itself to be grounded less in established constitutional doctrine than in broad demographic generalizations that effectively legitimize racial profiling. A revelation that is perhaps unsurprising, given the Justice's invocation of "common sense"—a phrase which, in context, seems to become a thinly veiled invitation to rely on racialized assumptions about who "appears" illegal.

Yet despite compelling evidence against Justice Kavanaugh's concurrence, *Noem v. Vazquez Perdomo* has been decided. The highest court in the country has given roving ICE agents the green light to stop, harass, and detain individuals on on the basis of race-correlated proxies such as language, appearance, and occupation. More broadly, *Noem* has shown Americans how deeply partisanship has infiltrated into the Supreme Court. Since taking office, the Trump administration has won more than 70% of the cases they have presented.[18] The Court

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[15] *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975)
[16] Ibid.
[17] Sonia Sotomayor, dissenting in *Noem v. Vasquez Perdomo*, No. 25A169, slip op. at 10 (U.S. Sept. 8, 2025).
[18] Lawrence Hurley, "Supreme Court Allows Trump to Withhold $4 Billion in Foreign Aid Funding," *NBC News*, September 26, 2025, https://www.nbcnews.com/politics/supreme-court/supreme-court-allows-trump-withhold-4-billion-foreign-aid-funding-rcna230348.

has aligned itself closely with President Trump's agenda, forfeiting what once was a dynamic system of checks and balances to an all-powerful executive branch.

America is in urgent need of empathy. Recent decisions from the Supreme Court—including the aforementioned *Noem*, *Trump v. CASA*[19], which effectively ended birthright citizenship, and *Noem v. Doe*,[20] which rescinded temporary legal status for approximately 500,000 immigrants—reflect a troubling pattern of jurisprudence directed at a singular, vulnerable population. The Trump administration is conducting a war on minority immigrants of all legal statuses, and the reality is that many Americans do not know or do not care. While these rulings leave the vast majority of individuals untouched, for those they do reach, the consequences are profound and perilous. They threaten not only people's lives but the foundational principles of equality and justice that underlie the democratic order. Without empathy, the nation risks descending into political theorist Ernst Fraenkel's "dual state"—a system in which the rule of law operates for some, while others are governed by arbitrary power. In such a framework, constitutional protections become conditional, applied selectively to those deemed deserving, while marginalized groups are subjected to a separate and less accountable regime of enforcement.[21] Silence in the face of injustice is complicity, Justice Sotomayor powerfully reminds Americans: "Rather than stand idly by while our constitutional freedoms are lost, I dissent."[22]

[19] *Trump v. CASA*, *Inc*., No. 24A884, 606 U.S. ___ (U.S. June 27 2025).
[20] *Noem v. Doe*, No. 24A1079, 605 U.S. ___ (U.S. May 30 2025).
[21] Ernst Fraenkel, *The Dual State.* (New York, London Oxford University Press, 1941).
[22] Sonia Sotomayor, dissenting in *Noem v. Vasquez Perdomo*, No. 25A169, slip op. at 2 (U.S. Sept. 8, 2025).