LYONS, REMEDIES, AND THE FOURTH AMENDMENT IN *NOEM V. VASQUEZ PERDOMO*

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In Noem v. Vasquez Perdomo*, the Supreme Court stayed a lower court injunction as part of its increasingly heavy emergency shadow docket. The injunction prohibited federal immigration authorities from continuing to detain people without reasonable suspicion during widespread, and at times violent, immigration raids in the greater Los Angeles area. Although we do not know the reasons for the Court's decision, Justice Kavanaugh elected to write a concurring opinion, in which he explained that he supported the stay for at least two reasons: He felt the plaintiffs lacked standing to seek an injunction under* City of Los Angeles v. Lyons*, and he felt the plaintiffs were unlikely to be successful on their underlying Fourth Amendment claims. On both points, Justice Kavanaugh is wrong. This Case Comment explains why. Drawing on the factual and procedural distinctions between* Lyons *and* Vasquez Perdomo*, I argue that* Lyons *does not carry the power ascribed by Justice Kavanaugh, and that key doctrinal features of Fourth Amendment jurisprudence and remedy law do not justify Kavanaugh's ultimate conclusions. Finally, I hypothesize what the concurrence means for the future of these types of cases, despite its non-precedential nature.*

INTRODUCTION

Justice Kavanaugh's concurring opinion granting a stay in *Noem v. Vasquez Perdomo*,[1] released on September 8, 2025, immediately received national attention. In part because of the nature of the case and in part because of the emergency posture in which the decision was handed down, journalists and scholars were quick to weigh in on both the reasoning of the

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[1] No. 25A169, 2025 WL 2585637, at *1–6 (U.S. Sep. 8, 2025) (Kavanaugh, J., concurring).

concurrence and the Court's decision to grant a stay.[2]

Vasquez Perdomo concerns immigration raids conducted by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), and other federal agencies in the greater Los Angeles area, as part of President Trump's widespread immigration enforcement effort dubbed "Operation at Large."[3] In the summer of 2025, federal agents descended upon Los Angeles, showing up at businesses and public spaces and stopping and detaining people whom they suspected of being in the United States illegally.[4] Plaintiffs sued and sought emergency relief from the district court to block the continued stops and detentions, which they alleged were conducted without reasonable suspicion in violation of the Fourth Amendment.[5] The lower court that considered the case granted plaintiffs the initial remedy they sought: a temporary restraining order prohibiting the federal government from detaining people who, like plaintiffs, were or appeared to be of certain races and/or ethnicities, spoke Spanish, worked for certain businesses like construction companies and car washes, and were present in certain locations when they were initially stopped.[6]

Just two months after the temporary restraining order[7] was issued, the

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[2] *See* Adam Liptak, *Supreme Court Lifts Restrictions on L.A. Immigration Stops*, N.Y. TIMES (Sep. 8, 2025), https://www.nytimes.com/2025/09/08/us/politics/supreme-court-los-angeles-immigration.html [https://perma.cc/XN5A-KEP9]; Lawrence Hurley, *Supreme Court Again Gives No Explanation in Ruling for Trump, This Time on Immigration*, NBC NEWS (Sep. 9, 2025, at 5:37 PM), https://www.nbcnews.com/politics/supreme-court/supreme-court-gives-no-explanation-ruling-trump-time-immigration-rcna229832 [https://perma.cc/T9BA-97ZW]; Elie Mystal, *The Supreme Court Just Gave the OK to Racial Profiling*, THE NATION (Sep. 8, 2025), https://www.thenation.com/article/society/supreme-court-racial-profiling-la-raids [https://perma.cc/B63Y-9QC2]; Andrew Chung, *US Supreme Court Backs Trump on Aggressive Immigration Raids*, REUTERS (Sep. 9, 2025), https://www.reuters.com/world/us/us-supreme-court-backs-trump-aggressive-immigration-raids-2025-09-08 [https://perma.cc/2ACH-CB4M]; Richard M. Re, *Some Thoughts on* Noem v. Vasquez Perdomo, DIVIDED ARGUMENT (Sep. 9, 2025), https://blog.dividedargument.com/p/some-thoughts-on-noem-v-vasquez-perdomo [https://perma.cc/FAY4-Z6FU].

[3] First Am. Pet. for Writ of Habeas Corpus and Compl. for Decl. and Inj. Relief at ¶¶ 1–6, *Vasquez Perdomo*, No. 2:25-cv-05605-MEMF-SP (C.D. Cal. July 2, 2025) [hereinafter First Am. Pet.]; *see* Julia Ainsley, Ryan J. Reilly, Allan Smith, Ken Dilanian, and Sarah Fitzpatrick, *A Sweeping New ICE Operation Shows How Trump's Focus on Immigration Is Reshaping Federal Law Enforcement*, NBC NEWS (June 4, 2025, at 7:45 AM), https://www.nbcnews.com/politics/justice-department/ice-operation-trump-focus-immigration-reshape-federal-law-enforcement-rcna193494 [https://perma.cc/K4RP-3KVV].

[4] First Am. Pet., *supra* note 3, at ¶¶ 2–6.

[5] *Id.* at 58–65.

[6] *Vasquez Perdomo*, 2025 WL 2585637, at *6–8 (Sotomayor, J., dissenting) (reviewing the lower decision's procedural history).

[7] Technically, the relief requested was styled as a temporary restraining order, which would ordinarily only last fourteen days and can be granted ex parte. *See* FED. R. CIV. P. 65(b). However, given the posture of the case and that the district court relied on briefing and information from the defendants in granting plaintiffs' request, the order resembles a preliminary injunction issued under Federal Rule of Civil Procedure 65(a). Importantly, temporary restraining orders are not

Supreme Court issued its stay through the emergency "shadow docket."[8] The majority that voted in favor of the stay did not explain its reasons for doing so. The only two opinions were a concurring opinion by Justice Kavanaugh and a dissenting opinion from Justice Sotomayor. Simply as a matter of procedure, it is (or at least, was) quite unusual for the court to insert itself at this preliminary stage. Without full briefing or argument, the Court inserted itself into ongoing litigation by staying the lower court's injunction and did so without any formal majority-supported explanation justifying its action. As Professor Steve Vladeck has noted, "as a practical matter, the Court's interventions [in this regard] are producing massive, permanent, and almost certainly irrevocable effects."[9] Even without a precedential opinion, Professor Vladeck suggests that "the Court is making law, explicitly or implicitly" when it grants emergency stays or otherwise rules without full briefing[10]—thus making the shadow docket process procedurally irregular, yet nonetheless common in today's Supreme Court procedure.

Justice Kavanaugh's opinion received mixed reviews in the legal community. Some commented in support of his Fourth Amendment analysis;[11] others focused on the dangers of the now all-too-commonplace use of the Court's emergency docket to intervene in the early stages of litigation, without much explanation of their reasoning.[12] Others still critiqued Justice Kavanaugh's puzzling suggestion that damages remedies

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immediately appealable; preliminary injunctions are. *See* 28 U.S.C. § 1292(a)(1) (allowing for interlocutory appeals to federal courts of appeals for any decisions "granting, continuing, modifying, refusing, or dissolving injunctions").

8 *Vasquez Perdomo*, 2025 WL 2585637. The "shadow docket" refers to cases that the Supreme Court takes and decides on an emergency basis, without full briefing and oral argument. Erwin Chemerinsky, *Why the Shadow Docket Should Concern Us All*, SCOTUSBLOG (Aug. 4, 2025), https://www.scotusblog.com/2025/08/why-the-shadow-docket-should-concern-us-all [https://perma.cc/E22Y-UGAN] (last visited Nov. 7, 2025); *see also* STEPHEN VLADECK, THE SHADOW DOCKET: HOW THE SUPREME COURT USES STEALTH RULINGS TO AMASS POWER AND UNDERMINE THE REPUBLIC (2023) (describing how the shadow docket has grown exponentially in recent years, in ways that curtail constitutional guarantees).

9 Steve Vladeck, *177: The (Not-So-) Interim Docket*, ONE FIRST (Sep. 8, 2025), https://www.stevevladeck.com/p/177-the-not-so-interim-docket [https://perma.cc/PY77-UYSP] (last visited Oct. 28, 2025) (discussing shadow docket decisions more broadly).

10 *Id.*

11 *See, e.g.*, Orin S. Kerr, *Supreme Court Lifts Injunction in Los Angeles Immigration Enforcement Case*, REASON: VOLOKH CONSPIRACY (Sep. 8, 2025, at 19:40 ET), https://reason.com/volokh/2025/09/08/supreme-court-lifts-injunction-in-los-angeles-immigration-enforcement-case [https://perma.cc/ES9T-EVJM] (last visited Oct. 28, 2025).

12 *See* Jordan Rubin, *Supreme Court's Fourth Amendment Order Highlights the Shadow Docket Problem*, MSNBC DEADLINE: LEGAL BLOG (Sep. 9, 2025, 14:52 CT), https://www.msnbc.com/deadline-white-house/deadline-legal-blog/supreme-court-shadow-docket-los-angeles-roving-patrols-rcna230147 [https://perma.cc/4VVV-Q6LP] (last visited Oct. 29, 2025); Matt Ford, *Brett Kavanaugh's Shadow Docket Attack on Your Civil Liberties*, NEW REPUBLIC (Sep. 10, 2025), https://newrepublic.com/article/200233/brett-kavanaugh-shadow-docket-immigration [https://perma.cc/A3UQ-FD6R].

are readily available, despite the Supreme Court's rollback of the damages actions against federal agents,[13] or the faulty reasoning in Justice Kavanaugh's conclusion that the balance of the harms and equities merited the stay.[14]

One of the more prominent questions raised was whether Justice Kavanaugh's analysis of *Lyons v. City of Los Angeles*,[15] the Supreme Court case that restricts standing for injunctive relief to those who can show a non-speculative risk of future harm, is correct. As someone who has litigated several police misconduct class actions and has more recently written extensively about *Lyons*, I think the answer is no. I take issue with Kavanaugh's conclusion that *Lyons* prevents an injunction in *Vasquez Perdomo* for two reasons. First, it ignores the context in which the district court entered its injunction. Second, it misconstrues the interrelation of Fourth Amendment reasonable suspicion analysis and the standing inquiry, and at times, simply gets the substantive law wrong.

This Case Comment proceeds in five brief parts. First, I explain *Lyons* and its place in the police misconduct litigation canon. In Part II, I discuss how and why *Lyons* does not bar the relief sought by the *Vasquez Perdomo* plaintiffs, and the ways in which Kavanaugh's concurrence misses the *Lyons* mark. Part III dissects Justice Kavanaugh's Fourth Amendment analysis, which leads to Part IV, in which I describe how the flaws identified in the previous Parts interact with one another to create a third flaw regarding how to properly craft temporary relief in police misconduct cases such as *Vasquez Perdomo*. I conclude by noting the ways in which Justice Kavanaugh's concurrence will ultimately affect both the litigation in Los Angeles and other law enforcement misconduct litigation, despite it lacking any true precedential value.

I
LYONS AND THE RISK OF FUTURE HARM

Understanding what *Lyons* was and was not about is the first step in

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13 *See* John Fritze, *Kavanaugh Faces Blowback for Claiming Americans Can Sue over Encounters with ICE*, CNN (Sep. 10, 2025), https://www.cnn.com/2025/09/10/politics/kavanaugh-blowback-ice [https://perma.cc/548P-MK8V] (last visited Oct. 29, 2025) (quoting notable civil rights attorneys who all agree that it is difficult to successfully sue damages under recent Supreme Court precedent). *See generally* Henry Rose, *The Demise of the* Bivens *Remedy Is Rendering Enforcement of Federal Constitutional Rights Inequitable but Congress Can Fix It*, 42 N. ILL. U. L. REV. 229 (2022) (explaining how federal court jurisprudence has rolled back the *Bivens* remedy, which originally allowed people injured by federal authorities to pursue damages claims against them for constitutional rights violations, such that this remedy is now nearly obsolete).

14 *See, e.g.*, Michael C. Dorf, *Working While Brown Is the New Driving While Black*, DORF ON LAW (Sep. 10, 2025), https://www.dorfonlaw.org/2025/09/working-while-brown-is-new-driving.html [https://perma.cc/BHK5-ZN6B] (last visited Oct. 29, 2025).

15 461 U.S. 95 (1983).

unpacking how Justice Kavanaugh's concurrence gets it wrong. *Lyons* involved a Black man who was placed in a chokehold by a Los Angeles Police Department (LAPD) officer during a traffic stop.[16] The district court entered an injunction prohibiting the LAPD from using the chokehold maneuver against those who did not resist arrest or attempt to flee, and the City appealed.[17] Eventually, the Supreme Court reversed, finding that because Mr. Lyons could not prove that he, personally, would be subjected to a chokehold in the future, he lacked standing to obtain injunctive relief.[18] To successfully pursue an injunction, Mr. Lyons would either need to show that *all* police officers in Los Angeles *always* choked nonresistant residents during encounters, *or* "that the City ordered or authorized police officers to act in such a manner."[19] The decision was 5-4.

Since its pronouncement in 1983, *Lyons* has been the subject of significant critique.[20] In a recent Article, I detail these critiques, the origins of *Lyons*, and how *Lyons* has functioned in the lower courts in the forty-plus years since the decision came down.[21] Roughly summarized, *Lyons* itself is not a paradigm of clarity, nor is it an easy standard to meet if read strictly.[22] Both lower courts and the Supreme Court itself often twist themselves into pretzels trying to decide what the standard requires and whether it can be met.[23]

In practice, *Lyons* appears to pose the biggest obstacle in policing cases.[24] The Supreme Court, and lower courts, have been willing to find

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16 *Id.* at 97–98.

17 *Id.* at 98–99.

18 *Id.* at 101–02, 105.

19 *Id.* at 105–06.

20 *See* Sharon Brett, *Standing in the Dark*, 51 BYU L. REV. 1 (2025) (collecting and describing scholarship that has been critical of the *Lyons* decision in various ways).

21 *See id.* (typologizing requirements for equitable relief standing in law enforcement suits post-*Lyons*).

22 *See id.* at 7, 11–13 (discussing systemic barriers to both pleading and standing requirements).

23 *See id.* at 14–17 (providing a survey of notable post-*Lyons* cases); *see also, e.g.*, Johnson v. McCowan, 549 F. Supp. 3d 469, 477–79 (W.D. Va. 2021) (distinguishing *Lyons* because the plaintiff's claim presented "only one" level of conjecture, and was therefore less speculative); Amadei v. Nelson, 348 F. Supp. 3d 145, 160–61 (E.D.N.Y. 2018) (distinguishing *Lyons* because plaintiffs alleged a widespread and "routine" practice of illegal searches, even though they had only been personally searched once); McClennon v. City of New York, 171 F. Supp. 3d 69, 105 (E.D.N.Y. 2016) (finding plaintiffs lacked standing for injunction barring police checkpoints because they could not show likelihood of future harm, even though they had been subjected to the checkpoints in the past); Curtis v. City of New Haven, 726 F.2d 65, 68–69 (2d Cir. 1984) (finding plaintiffs lacked standing for injunction in case involving police use of pepper spray because no official policy mandating use of pepper spray existed, and plaintiffs' argument they would be sprayed in the future was speculative).

24 *See* Brett, *supra* note 20, at 11–14 (highlighting systemic barriers to proving standing). The Court has described this as making the standing inquiry "especially rigorous" when ruling on the merits would force the Court to decide "whether an action taken by one of the other two branches

workarounds in other contexts. Take, for example, *Gratz v. Bollinger*, where plaintiffs sued the University of Michigan regarding their use of race-conscious admissions policies.[25] The class representative for those challenging the undergraduate admissions policy, Patrick Hamacher, was denied admission as a freshman.[26] He sought to enjoin the University of Michigan from using its freshman admissions policy in the future—even though he, personally, would never be subject to that admissions policy again.[27] The Court saw no *Lyons* problem there; *Lyons* is never even mentioned in the majority opinion.

We could also look to *303 Creative LLC v. Elenis*.[28] There, the Court found a website designer had pre-enforcement standing to sue to prevent the application of a Colorado anti-discrimination law that could, hypothetically, require her to make wedding websites for same-sex couples in violation of her sincerely held religious beliefs.[29] Some scholars pointed out that this did not appear to amount to a case or controversy as required by Article III.[30] The case seemed entirely hypothetical, something that *Lyons* would, on its face, expressly forbid. The Supreme Court disagreed and found the plaintiff had standing to pursue her claim.[31]

Nonetheless, the courts seem much more concerned about *Lyons* in police misconduct cases.[32] Perhaps this is why we often see an overextension and illogical reading of *Lyons*—with Kavanaugh's concurrence in *Vasquez Perdomo* being the latest example. Kavanaugh's analysis primary concern is that the plaintiffs in *Vasquez Perdomo* "like in *Lyons*, . . . have no good basis to believe that law enforcement will unlawfully stop *them* in the future based on the prohibited factors—and certainly no good basis for believing that any

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of the Federal Government was unconstitutional." Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408 (2013) (quoting Raines v. Byrd, 521 U.S. 811, 819–20 (1997)).

25 539 U.S. 244, 251 (2003).

26 *Id.* at 251–53.

27 Hamacher had gone on to enroll at another university. At best, he could apply to the University of Michigan as a transfer student. But transfer students were not subject to the freshman admissions policy challenged in the litigation. *See id.* at 285 (Stevens, J., dissenting) ("[T]here is not a scintilla of evidence that the freshman admissions program now being administered by respondents will ever have any impact on either Hamacher or Gratz.").

28 600 U.S. 570 (2023).

29 *See id.* at 579–83.

30 *E.g.*, David Post, *Case or Controversy Requirement? What Case or Controversy Requirement?*, REASON: VOLOKH CONSPIRACY (July 8, 2023, at 11:32 ET), https://reason.com/volokh/2023/07/08/case-or-controversy-requirement-what-case-or-controversy-requirement [https://perma.cc/32UF-BNTE] (last visited Oct. 29, 2025). *But see* Richard M. Re, *Does the Discourse on* 303 Creative *Portend a Standing Realignment?*, 99 NOTRE DAME L. REV. REFLECTION 67, 67–76 (2023).

31 *303 Creative*, 600 U.S. at 587–89 (referencing the Tenth Circuit's holding). Importantly, the lack of a meaningful dispute about standing amongst the parties in *303 Creative* may have influenced the Court's willingness to ignore *Lyons* in that case.

32 *See* cases cited *supra* note 23 (collecting cases involving claims of police misconduct).

stop of the plaintiffs is imminent."[33] As explained below, this statement is factually incorrect and ignores the context of the procedural posture of the *Vasquez Perdomo* case, both of which merit a different result.

II
CONTEXT MATTERS: THE INTERSECTION OF STANDING, PRELIMINARY REMEDIES, AND CLASS ACTIONS

The second fault in Justice Kavanaugh's concurrence concerns his ignorance of how *Lyons* can be distinguished from *Vasquez Perdomo* in several meaningful ways. The procedural and factual context under which *Vasquez Perdomo* was brought is a key component of the *Lyons* inquiry that Justice Kavanaugh simply, and conveniently, overlooks. This case was brought on behalf of five individuals and three membership organizations, which collectively represent thousands of individuals living in the Los Angeles area.[34] The case was also brought as a class action, meaning that the named plaintiffs sought to represent themselves and those similarly situated—i.e., everyone who may be subjected to the DHS's immigration enforcement raids in Los Angeles.[35]

That is significant. Another forthcoming article of mine explores why class action status should change the standing calculus under *Lyons*.[36] In short, Rule 23(b)(2) class actions like *Vasquez Perdomo* are intended to stop government overreach, and the procedural vehicle's creation was rooted in allowing people to pool their adjudicative power in the face of unconstitutional policies and/or systemic harms.[37] When proceeding as a class, the named plaintiff represents the risk they personally face as well as the risk that any and all individual class members face of experiencing the constitutional violation in the future. In other Article III circumstances—most notably, mootness—the Court has recognized a prudential carveout that allows cases to continue when the individual's risk of harm is diminished or extinguished, but the class's risk remains.[38]

Certain types of claims, especially Eighth and Fourteenth Amendment claims, seem to survive *Lyons* when brought as a class action. In *Parsons v. Ryans*, a case alleging systemic Eighth Amendment violations in Arizona's prison system, the Ninth Circuit affirmed the district court's class

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33 Noem v. Vasquez Perdomo, No. 25A169, 2025 WL 2585637, at *2 (U.S. Sep. 8, 2025) (Kavanaugh, J., concurring).

34 First Am. Pet., *supra* note 3, at ¶¶ 12–20.

35 *See id.* ¶ 8.

36 Sharon Brett, *Article III Standing and the Public Interest Class Action*, 47 CARDOZO L. REV. (forthcoming 2026) (manuscript at 16–21) (on file with the author).

37 *Id.* at 17 (referencing the Rule 23 Advisory Committee Notes).

38 *Id.* at 25–26 (discussing *Gratz* and U.S. Parole Commission v. Geraghty, 445 U.S. 388, 393 (1980) as prime examples).

certification decision without even mentioning *Lyons*.[39] In *Lewis v. Cain*, another class action challenging insufficient medical care in prisons under the Eighth Amendment, the district court granted the plaintiffs relief, again without *Lyons* posing any issue.[40] Class action litigation challenging foster care systems continues to see success.[41] Even though the named plaintiffs in those cases, as in *Vasquez Perdomo*, could not demonstrate a likelihood of being personally subjected to unconstitutional conditions of confinement or maladministered foster care systems again, the fact that the policy or program targeted the class was significant.[42] In those cases, *Lyons* did not bar relief.

Although the Supreme Court has yet to adopt a more expansive view of standing in Rule 23(b)(2) litigation, the present procedural posture of *Vasquez Perdomo* provides greater normative reason to do so. The initial litigation at the district court level occurred at warp speed. The immigration raids in Los Angeles began on June 6, 2025,[43] and the named plaintiffs were stopped and detained by federal law enforcement between June 12 and June 18.[44] The amended complaint was filed alongside a motion for a temporary restraining order on July 2, and the plaintiffs filed their second motion for a temporary restraining order on July 3.[45] The district court granted the motion on July 11 with a fifty-two page opinion explaining the court's reasoning.[46] At that point in time, the court felt it had enough to grant a temporary restraining order. Whether that order would endure and convert to permanent relief would be worked out after the benefit of full discovery. That is precisely the point of temporary injunctions: to preserve the status quo while the full case plays out on the merits. Whether the defendants would be able to eventually restart their saturation efforts in the future would be left for a later date. According to the district court, at least, there was enough of a reason to step in now to preserve the status quo for plaintiffs—that is, no detentions and arrests of people based on their race, profession, or place of

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39 754 F.3d 657 (9th Cir. 2014).

40 701 F. Supp. 3d 361 (M.D. La. 2023).

41 *See* 31 Foster Children v. Bush, 329 F.3d 1255, 1266 (11th Cir. 2003) (finding plaintiffs had standing for injunctive relief because of overarching policies and practices used by the state in class action litigation challenging systemic deficiencies in foster care system); *see* Connor B. *ex rel.* Vigurs v. Patrick, 771 F. Supp. 2d 142, 153 (D. Mass. 2011) ("[U]nlike the plaintiffs in *Lyons* and *O'Shea*," standing existed to challenge foster care system because plaintiffs alleged that "[d]efendants maintain policies and practices that continue to harm them.").

42 *See* David Marcus, *The Public Interest Class Action*, 104 GEO. L.J. 777, 816–19 (2016).

43 First Am. Pet., *supra* note 3, at ¶ 5.

44 *Id.* ¶¶ 12–16.

45 *Ex parte* Application for Temp. Restraining Order and Order to Show Cause re: Preliminary Injunction, Vasquez Perdomo v. Noem, 790 F. Supp. 3d 850 (C.D. Cal. 2025) (No. 2:25-cv-05605-MEMF-SP).

46 *Vasquez Perdomo*, 790 F. Supp. 3d 850 (order granting temporary restraining order and order to show cause regarding preliminary injunction).

arrest alone[47]—while plaintiffs pursued their claim that complete, permanent relief is appropriate.

But even without adopting a recalibrated standing analysis in public interest class action litigation, the facts here support finding that the *Lyons* standard was met. As found by the district court, the federal government was conducting roving immigration patrols and likely targeting individuals without the individualized, articulable reasonable suspicion required by the Fourth Amendment.[48] The widespread nature of these patrols and the common allegations amongst the class representatives regarding why they were targeted suggest a unified approach that would put all Hispanic-looking individuals at certain locations at risk. Recognizing this, the district court judge noted that the plaintiffs sought certification of three different classes under Rule 23(b)(2): one for those subjected to or at risk of suspicion-less stops, another regarding warrantless arrests, and a final one addressing federal agents' failure to identify themselves during the raids.[49] It went on to distinguish *Lyons* and the precedent on which *Lyons* was based, *Rizzo v. Goode*,[50] finding that in both of those cases there was no overarching policy calling for the misconduct those plaintiffs experienced.[51] Unlike in those cases, the court reasoned, the *Vasquez Perdomo* plaintiffs demonstrated that their unlawful stops and detentions were caused by an executive branch policy that would continue to result in unconstitutional policing if not enjoined by the court.[52] Such a policy was not at issue in *Lyons—Lyons*, therefore, should pose no bar to relief. The Ninth Circuit panel unanimously agreed.[53] The President's expressed intention to continue to conduct immigration raids against those who appeared to be unlawfully present in the United States—whatever that means—and the pattern of activity alleged and proved at the temporary restraining order hearing set the *Vasquez Perdomo* plaintiffs' situation apart from *Lyons*.[54]

Importantly, *Lyons* was not a class action. Nor did it involve a broad policy directing all LAPD officers to engage in chokeholds. Although Mr. Lyons *himself* could not show he was at risk of future harm, the Court recognized that had a policy mandating chokeholds existed, standing could be satisfied.[55] Contrast that with the putative *Vasquez Perdomo* case, wherein

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47 *Id.* at 898.

48 *Id.* at 893–94.

49 *Id.* at 871.

50 423 U.S. 362, 371 (1976).

51 *Vasquez Perdomo*, 790 F. Supp. 3d at 887.

52 *Ex parte* Application for Temp. Restraining Order and Order to Show Cause re: Preliminary Injunction at 35, *Vasquez Perdomo*, 790 F. Supp. 3d 850 (No. 2:25-cv-05605-MEMF-SP).

53 Vasquez Perdomo v. Noem, 148 F.4th 656, 674 (9th Cir. 2025).

54 *Id.* at 674–75 (distinguishing plaintiffs' case from *Lyons*).

55 *See* Los Angeles v. Lyons, 461 U.S. 95, 106 n.7 (1983) ("We agree completely that for Lyons to succeed in his damages action, it would be necessary to prove that what happened to him

the plaintiffs claim—and will attempt to prove—an underlying policy or practice dictating suspicion-less stops and seizures. The federal government does not dispute the named plaintiffs' allegations that the government will continue to conduct its raids.[56] Nor does it dispute that the immigration raids were taking place at putative class members' jobs, local businesses they frequent, and other places that putative class members cannot avoid, and targeting people who looked like plaintiffs.[57] One named plaintiff, J.M.E., had already been stopped more than once.[58] Other facts picked up on by Justice Sotomayor, but ignored by Justice Kavanaugh, demonstrate that pursuant to Operation at Large, ICE agents returned to the same location multiple times over a period of days.[59] This all distinguishes *Vasquez Perdomo* from *Lyons* quite clearly. Justice Kavanaugh's concurrence, though, deliberately avoids engagement with these facts and arguments.

Part of the Court's reasoning in granting the stay may be about sequencing. Plaintiffs had not yet moved for class certification, and certification was unlikely to occur on the expedited basis on which the case was proceeding. But a motion for class certification was undoubtedly forthcoming, and under any reasonable reading of Rule 23, would likely be granted.[60] The fact that a motion for class certification had not yet been filed should be irrelevant, at least as a normative manner, when the district court knew that a class certification motion was imminent and the litigation was proceeding at breakneck speed. When a class certification motion has been filed, but not yet ruled on, courts may be willing to grant temporary relief.[61] So, too, should they maintain flexibility when a class certification motion is imminent. The lower court recognized as much, at least in the factual

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. . . was pursuant to a city policy.").

56 *See Vasquez Perdomo*, 148 F.4th at 672.

57 *See id.* at 672, 683–84.

58 *Id.* at 674.

59 Noem v. Vasquez Perdomo, No. 25A169, 2025 WL 2585637, at *6 (U.S. Sep. 8, 2025) (Sotomayor, J., dissenting).

60 To satisfy Rule 23(a), the plaintiffs will have to show that the class is so numerous that joinder of all members is impracticable; that there are common questions of law or fact; that the claims or defenses of the representative parties are typical of the claims or defenses of the class; and that the representative parties will fairly and adequately protect the interests of the class. FED. R. CIV. P. 23(a). These are commonly referred to as the numerosity, commonality, typicality, and adequacy requirements. The plaintiffs would further need to satisfy Rule 23(b)(2) by showing that the party opposing the class—here, the government—has acted on grounds that apply generally to the class, such that final injunctive relief is appropriate for the class as a whole. FED. R. CIV. P. 23(b)(2). Although a complete analysis of plaintiffs' pursuit of class action status is beyond the scope of this Case Comment, suffice it to say that because plaintiffs challenge DHS's uniform approach to the entire Latino community in the greater Los Angeles area, these requirements will likely be satisfied.

61 AARP v. Trump, 145 S. Ct. 1364, 1369 (2025) ("[C]ourts may issue temporary relief to a putative class." (citing 2 W. RUBENSTEIN, NEWBERG & RUBENSTEIN ON CLASS ACTIONS § 4:30 (6th ed. 2022 & Supp. 2024))).

circumstances of this case.[62] At least two Supreme Court decisions suggest that class certification is "logically antecedent" to the ultimate resolution of Article III issues like standing.[63] Just last term,[64] several justices asked questions at oral argument that expressed an understanding of how class actions require flexibility in procedure, especially at the beginning of a case.[65]

Given this, Kavanaugh's insistence that the plaintiffs could not demonstrate standing for injunctive relief on an emergency temporary restraining order, before the lower court could possibly consider class certification, seems premature at best and disingenuous at worst. Although moving for class certification contemporaneous with the complaint was theoretically possible for plaintiffs, the fast-paced nature of this litigation may have made it difficult. Nevertheless, a class certification motion was forthcoming. Lifting the injunction on *Lyons* grounds, in the face of this reality, is neither doctrinally supported nor normatively appropriate. Under Kavanaugh's reading, it is hard to imagine any circumstances when a set of plaintiffs, proceeding in a class posture, could satisfy *Lyons* and obtain preliminary relief. Perhaps that was the point.

III
FOURTH AMENDMENT INJUNCTIONS: LAW AND PROCESS

My second main contention with Justice Kavanaugh's analysis concerns his cherry-picking of Fourth Amendment jurisprudence and his willful mischaracterization of the practices at issue in the case.

Justice Kavanaugh's perspective, reflected in his concurring opinion, is one I have seen before. I do not profess to be a Fourth Amendment scholar or expert, although I have successfully litigated Fourth Amendment class actions on behalf of victims of police misconduct. Some of these class actions have even involved cases challenging stops and detentions conducted pursuant to a broader agency directive that are not supported by reasonable suspicion.[66] Kavanaugh notes that the reasonable suspicion standard is low, reflecting the need to allow law enforcement to carry out their important

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62 Vasquez Perdomo v. Noem, 790 F. Supp. 3d 850 (C.D. Cal. 2025) (discussing the district court's flexibility in managing the timing of class certification at the TRO stage).

63 Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 612 (1997); Ortiz v. Fibreboard Corp., 527 U.S. 815, 831–32 (1999) (quoting *Amchem Prods.*, 521 U.S. at 612).

64 Lab'y Corp. of Am. Holdings v. Davis, 145 S. Ct. 1608 (2025).

65 *See* Ronald Mann, *Class Action Question Turns into Procedural Dispute*, SCOTUSBLOG (Apr. 30, 2025), https://www.scotusblog.com/2025/04/class-action-question-turns-into-procedural-dispute [https://perma.cc/8WU4-3G4A] (last visited Nov. 3, 2025).

66 Shaw v. Jones, 683 F. Supp. 3d 1205, 1250 (D. Kan. 2023), *rev'd sub nom.*, Shaw v. Smith, No. 23-3264 (10th Cir. 2023) (challenging the Kansas Highway Patrol's use of roadside detentions for out-of-state motorists without adequate reasonable suspicion, on the belief that they were tracking drugs to and from Colorado).

enforcement priorities unencumbered by an injunction's restrictions.[67] Indeed, police routinely justify programs that may impact large numbers of people they do not intend to target, in violation of those individuals' civil liberties, by creating public safety strawmen.[68]

The argument goes something like this: we are taking legal action (i.e., arrest, prosecution, or in the case of immigration proceedings, deportation) against X Group. X Group is in this general area, and, generally speaking, X Group members have both Characteristic A and Characteristic B. It does not matter that many people *not* in X Group also share those characteristics. It also does not matter that people who *are* in Group X do not have Characteristic A and/or Characteristic B. We will, nonetheless, make our enforcement targets those people with Characteristic A (looks Hispanic) and Characteristic B (working certain types of jobs), in the hopes that means we are successfully targeting X Group (undocumented immigrants). If some non-Group X individuals are targeted as a result, so be it.

The problem with this is multifold. First, it leads to over-inclusive and unconstitutional enforcement. Many individuals who do not belong to the target group will be wrapped up in the enforcement effort and, as a result, have their legal rights violated. Especially when the characteristics are broadly applicable to wide swaths of the population that are *not* members of X Group, the error rate can be high.[69] What happened to Lee Stinton, a

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67 *See* Noem v. Vasquez Perdomo, No. 25A169, 2025 WL 2585637, at *3–5 (Sep. 8, 2025) (Kavanaugh, J., concurring) (pointing out the low threshold for finding reasonable suspicion, stating, without citation, that the Court's precedents allow for these sorts of immigration-related stops, and justifying the stay of the injunction because of the importance of the government operation "given the millions of individuals illegally in the United States").

68 The defendants in the New York City stop-and-frisk litigation vigorously opposed reform on the grounds that the program was necessary for crime reduction. *See generally Case Page:* Floyd v. City of New York, CTR. FOR CONST. RTS., https://ccrjustice.org/home/what-we-do/our-cases/floyd-et-al-v-city-new-york-et-al [https://perma.cc/GK5L-Y833] (last visited Nov. 10, 2025) (describing the history of the *Floyd* litigation, including the nine-week trial that ultimately resulted in plaintiffs prevailing). The same occurred when plaintiffs challenged the New York Police Department's racial profiling of Muslim Americans after the September 11th terrorist attacks. *See generally Case Page:* Hassan v. City of New York, CTR. FOR CONST. RTS., https://ccrjustice.org/home/what-we-do/our-cases/hassan-v-city-new-york [https://perma.cc/4J3A-9935] (last visited Nov. 10, 2025) (summarizing the *Hassan* litigation, which took six years for the City to ultimately settle).

69 *See, e.g.*, Tom Phillips & Clavel Rangel, *'He is Not a Gang Member': Outrage as US Deports Makeup Artist to El Salvador Prison for Crown Tattoos*, THE GUARDIAN (Apr. 1, 2025, at 12:40 ET), https://www.theguardian.com/us-news/2025/apr/01/its-a-tradition-outrage-in-venezuela-as-us-deports-makeup-artist-for-religious-tattoos [https://perma.cc/4PYE-89NZ] (describing how federal authorities detained and deported a man based on the unfounded determination that his tattoo was gang-related); Nicole Foy, *We Found That More Than 170 U.S. Citizens Have Been Held by Immigration Agents. They've Been Kicked, Dragged, and Detained for Days*, PROPUBLICA (Oct. 16, 2025), https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will [https://perma.cc/8SJ9-CJ4M] (describing arrests of U.S. citizens based on their places of employment).

hairdresser from Northern Ireland living in Florida, exemplifies this point. In June, Mr. Stinton was biking to work when an ICE officer stopped him.[70] The officer told Stinton that he "look[ed] Mexican" and asked him for his documentation.[71] Mr. Stinton had been in the process of applying for citizenship through a special status meant to protect victims of domestic abuse.[72] Stinton did not carry his work authorization or immigration paperwork around with him; he kept it in a safe location. On this basis, Stinton was arrested and detained for a month, and then ultimately deported.[73]

Second, the Fourth Amendment requires *individualized* reasonable suspicion—not *generalized* reasonable suspicion.[74] The controlling precedent in the jurisdiction where *Vazquez Perdomo* was initially decided, the Ninth Circuit, is explicit on this: There is nothing individualized about subjecting all Hispanic-looking individuals in a Home Depot parking lot to stops and detention.[75] The Ninth Circuit's caselaw is clear that "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."[76] Otherwise, Justice Kavanaugh's arguments would, if broadly accepted, have a profound impact of turning everyone who fits a certain profile in a targeted area into an immediate suspect. That would be a wholly unsupported expansion of the Court's Fourth Amendment precedents, to say nothing of the Ninth Circuit's caselaw.

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70 Mandy Miles, *Popular Key West Hairstylist Detained by ICE on June 12*, KEYSWEEKLY (June 26, 2025), https://keysweekly.com/42/popular-key-west-hairstylist-detained-by-ice-on-june-12 [https://perma.cc/QMC7-HDGV].

71 Gabrielle Swan, *Horrors of Trump Detention Centre: Lisburn Man Tells His Story After Arrest for 'Looking Like a Mexican'*, BELFAST TELEGRAPH (Sep. 10, 2025), https://www.belfasttelegraph.co.uk/news/world-news/horrors-of-trump-detention-centre-lisburn-man-tells-his-story-after-arrest-for-looking-like-a-mexican/a1990029828.html [https://perma.cc/J6KZ-992Z].

72 Stinton had previously been married to a U.S. citizen and was going through the process of obtaining a green card. When the marriage ended with charges of domestic abuse against the spouse, Stinton began to pursue legal residency through the Violence Against Women Act's special protective status for victims of domestic abuse. Miles, *supra* note 70.

73 Swan, *supra* note 71. Mr. Stinton's partner, DeVaun Davis, maintains that Stinton was going through the proper immigration procedures to obtain permanent residency. Miles, *supra* note 70.

74 *See* Kansas v. Glover, 140 S. Ct. 1183, 1195 (2020) (Kagan, J., concurring) (stating that stops must be individualized); United States v. Rodriguez Sanchez, 23 F.3d 1488, 1492 (9th Cir. 1994) (stating that reasonable suspicion requires more than "broad profiles which case suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped.").

75 *See* United States v. Montero-Camargo, 208 F.3d 1122, 1132 (9th Cir. 2000) (en banc) (stating that courts cannot "approve the wholesale seizure of miscellaneous persons . . . in the absence of well-founded suspicion based on particular, individualized and objectively observable factors which indicate" that the person is indeed in the United States illegally).

76 *Id.* at 1134.

Focusing only on the fact that some hypothetical subset of all stops and detentions may be supported by reasonable suspicion loses the forest for the trees. Fourth Amendment expert Professor Orin Kerr correctly noted that "the usual practice is that courts rarely enter injunctions in Fourth Amendment cases" because the law is "just too fact-specific."[77] That may be true, but there are certain types of cases where injunctions are appropriate: those that involve an officially sanctioned policy or widespread practice that directs the law enforcement officials to engage in stops and searches of individuals based on criteria that, alone or in conjunction with one another, do not amount to reasonable suspicion. In those cases, it is not the individual discretionary, fact-specific decision-making of officers being challenged, but rather the formal sanctioning and directing of unconstitutional actions. *Vasquez Perdomo* is one such case.

The fact that there may be some constitutional stops and detentions should not negate the ability to challenge the practice writ large, especially at this early juncture. The facts as alleged demonstrated that the federal government's program was already resulting in unconstitutional stops and detentions. The individual plaintiffs' experiences, and the government's insistence that the program must continue, suggest that more violations will likely be forthcoming.

Here, there is a bit of an evidentiary overlap with what is required under *Lyons*—the number of unconstitutional stops is yet unknown, but the risk of additional unconstitutional stops in the future is certainly not speculative or hypothetical. Professor Kerr correctly points out that Justice Kavanaugh seems to be making a host of assumptions about just how many unconstitutional versus constitutional stops were occurring.[78] After all, at this preliminary posture, there is no robust discovery available. The government's stated intention to continue carrying out these raids based on four factors that, alone or together with one another but without more do not support reasonable suspicion, should have been enough.

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77 Kerr, *supra* note 11.

78 *Id.* ("It's trying to answer a vague hypothetical: If there were actual facts, would those actual facts reveal a Fourth Amendment violation? I think the answer is, well, it just depends on what the facts turn out to be."); *see* Noem v. Vasquez Perdomo, No. 25A169, 2025 WL 2585637, at *4 (U.S. Sep. 8, 2025) (Kavanaugh, J., concurring) (describing the need to let ICE agents conduct immigration raids, "particularly given the millions of individuals illegally in the United States, the myriad 'significant economic and social problems' caused by illegal immigration . . . and the Government's efforts to prioritize stricter enforcement of the immigration laws enacted by Congress" (citation omitted)); *id.* at *3 (crediting defendant's allegations in support of reasonable suspicion to conduct these detentions, stating without citation to the record that "there is an extremely high number . . . of illegal immigrants in the Los Angeles area; [they] . . . gather . . . to seek daily work; [they] . . . work in certain kinds of jobs, such as day labor, landscaping, agriculture, and construction . . . [and] many . . . come from Mexico or Central America and do not speak much English").

Kavanaugh's errors go further, though, when he suggests that these stops are nothing to be concerned about. Without factual support, Justice Kavanaugh claims that DHS stops are "typically brief" and that as soon as a person can prove they are in the United States legally, they are free to go.[79] This is, to put it mildly, inaccurate.[80] If law enforcement does not immediately generate reasonable suspicion, they may prolong the stop in hopes of discovering new information that would support a canine sniff or further search.[81] Investigative stops may also turn deadly.[82] The plaintiffs in *Vasquez Perdomo* experienced violent encounters with DHS agents, most of whom were masked and failed to identify themselves.[83] Just twenty-four hours after the *Vasquez Perdomo* decision came out, DHS resumed its operations in Los Angeles. Video footage quickly surfaced of agents in Van Nuys, California, surrounding a car with guns drawn, pulling a pregnant woman from the vehicle and slamming her to the ground.[84] The two men in the vehicle were allegedly legal permanent residents, and the woman was a U.S. citizen.[85] A new lawsuit filed in response to ICE stops and detentions in Washington, D.C. makes similar allegations of widespread suspicion-less stops and arrests of individuals without even asking who those individuals

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79 *Vasquez Perdomo,* 2025 WL 2585637, at *5 (Kavanaugh, J., concurring).

80 *See, e.g.*, Sarah Betancourt, *ICE Releases Fabian Schmidt, N.H. Green Card Holder in Detention for 2 Months*, WGBH (May 9, 2025), https://www.wgbh.org/news/local/2025-05-09/ice-releases-fabian-schmidt-n-h-green-card-holder-in-detention-for-2-months [https://perma.cc/RPW5-BUGX] (describing how Schmidt was detained at Logan Airport and subjected to lengthy, violent questioning and then placed in immigration detention, despite being a green card holder with lawful presence in the United States).

81 *See* Shaw v. Jones, 683 F. Supp. 3d 1205, 1250 (D. Kan. 2023) (citing Ortega-Melendres v. Arpaio, 836 F. Supp. 2d 959, 979 (D. Ariz. 2011)) (finding that the Kansas Highway Patrol routinely targeted out-of-state motorists for traffic stops, and then attempted to prolong the traffic encounter through additional questioning as a means of generating reasonable suspicion to call a canine unit in to sniff around the vehicles in search of drugs), *appeal filed*, *rev'd sub nom.*, Shaw v. Smith, No. 23-3264 (10th Cir. 2023).

82 *See, e.g.*, Julia Ainsley & Tim Stelloh, *Shooting by Federal Officer Wounds Immigrant and U.S. Marshal in Los Angeles, Officials Say*, NBC NEWS (Oct. 21, 2025), https://www.nbcnews.com/news/us-news/us-marshal-undocumented-immigrant-shot-ice-stop-los-angeles-officials-rcna238997 [https://perma.cc/FD6D-JZ8G] (describing a traffic stop that ended with law enforcement agents firing shots while a driver crashed into agency vehicles that were surrounding it); David Struett & Kade Heather, *Attorney for Woman Shot by Border Patrol Claims Agent Said, 'Do Something B——' Before Shooting*, WBEZ CHI. (Oct. 7, 2025), https://www.wbez.org/public-safety/2025/10/07/marimar-martinez-anthony-ian-santos-ruiz-border-patrol-shooting-brighton-park [https://perma.cc/HP4D-H9LR] (describing an altercation between federal agents and a U.S. citizen leading to that citizen being shot five times).

83 Vasquez Perdomo v. Noem, 148 F.4th 656, 667–68 (9th Cir. 2025) (describing plaintiffs' fear that the armed, masked individuals were kidnappers because they refused to identify themselves as law enforcement agents).

84 Anabel Munoz, *Federal Agents Detain Multiple People at Gunpoint in Van Nuys*, ABC7 NEWS L.A. (Sep. 9, 2025), https://abc7.com/post/federal-agents-detain-multiple-people-gunpoint-van-nuys-video-shows/17782297 [https://perma.cc/UPG6-5CAU].

85 *Id.*

are or giving them an opportunity to explain their legal status.[86]

Even if a detention is short and remains nonviolent, it can nonetheless have a profound impact. Litigation challenging the New York Police Department's stop-and-frisk program made this clear, as have countless other civil rights actions challenging unlawful detention practices across the country.[87] Even the threat of unlawful stops and detention cause a chilling effect, making people afraid to leave their homes, go to work, or otherwise go about their daily lives.[88]

Justice Kavanaugh also conveniently ignores that many individuals cannot immediately produce proof of citizenship or legal presence sufficient to satisfy DHS agents on the scene.[89] These individuals could be arrested and

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86 Complaint, Escobar Molina v. Dep't of Homeland Sec., 2025 WL 3465518 (D.D.C. 2025) (No. 25-CV-03417). One of the lead plaintiffs in that case, Jose Escobar Molina, alleges that he was grabbed by plain-clothed federal officers while getting into his truck to go to work. *Id.* ¶ 3. The officers arrested Mr. Molina without asking for his name, identification, or anything about his legal status, then held him in detention overnight. *Id.* It wasn't until the next day that an ICE supervisor realized Mr. Molina had a valid Temporary Protected Status, and his immigration papers were in order. He was released later that day. *Id.* The district court has since granted a preliminary injunction to plaintiffs, enjoining ICE from conducting such warrantless civil arrests. *Escobar Molina*, 2025 WL 3465518, at *4 ("Defendants are preliminary enjoined from enforcing their policy of conducting warrantless civil immigration arrests without probable cause to believe that the arrestee is likely to escape before an administrative warrant can be obtained; and only plaintiffs' proposed Unassessed Escape Risk Class is provisionally certified.").

87 *See* Smith v. City of Chicago, 143 F. Supp. 3d 741, 752 (N.D. Ill. 2015) (challenging Chicago Police Department's stop-and-frisk practices); Ortega-Melendres v. Arpaio, 836 F. Supp. 2d 959, 979 (D. Ariz. 2011), *aff'd sub nom.*, Melendres v. Arpaio, 695 F.3d 990 (9th Cir. 2012) (challenging targeting of Latino drivers and use of immigration checkpoints by local police); Md. State Conf. of NAACP Branches v. Md. Dep't of State Police, 72 F. Supp. 2d 560, 563–64 (D. Md. 1999) (alleging racially discriminatory pattern of police stops and searches); Plaintiffs' Proposed Findings of Fact and Conclusions of Law, Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (No. 1:08-cv-01034) (challenging NYPD stop-and-frisk program).

88 *See generally* James Rainey, *Sadness, Unease Prevail, as Supreme Court Eases Path for Immigration Raids*, L.A. TIMES (Sep. 10, 2025), https://www.latimes.com/california/newsletter/2025-09-10/essential-california-supreme-court-ice-reaction [https://perma.cc/D33M-D9XS] (explaining Californian workers' reactions to the Court's allowance of targeting specific groups based on employment in federal raids); Atra Mohamed, *A Cloud of Fear Hangs Over Minnesota Immigrant Communities*, MINN. REFORMER (Jan. 19, 2026, at 6:00 ET), https://minnesotareformer.com/2026/01/19/a-cloud-of-fear-hangs-over-minnesota-immigrant-communities [https://perma.cc/D3N5-9RKM] (describing the terror consuming people in Minnesota, espeicailly Somali Americans, since federal immigration agents began violent raids, leaving people afraid to leave their homes).

89 *See generally* Nick Miroff, *How Do You Prove Your Citizenship?*, THE ATLANTIC (Sep. 12, 2025), https://www.theatlantic.com/politics/archive/2025/09/ice-papers-proof-immigration-status-kavanaugh/684183/?utm_source=copy-link&utm_medium=social&utm_campaign=share [https://perma.cc/L6QE-4BKP] (explaining that ICE has been inconsistent and does not define what documentation it will accept to verify citizenship status); Conor Wight, *U.S. Citizens Recount Being Detained by ICE During Minnesota Operation*, CBS NEWS (January 13, 2026, at 07:36 CST), https://www.cbsnews.com/minnesota/news/us-citizens-arrested-by-ice-minneapolis [https://perma.cc/33WZ-F2ZA] (describing instances of ICE confronting individuals to "prove [their citizenship]" while simultaneously handcuffing and putting them in the back of a vehicle).

potentially detained for weeks, even if they are here legally, or even if they are United States citizens.[90]

IV
PUTTING IT ALL TOGETHER

Standing and the merits inquiry are two parts of Justice Kavanaugh's puzzle. The third is one of remedial fit: whether any injunction, at all, would properly restrain federal police in their immigration enforcement work.[91]

This question is not one raised by Kavanaugh alone. Professor Kerr, too, wonders whether it is possible, at all, to fashion a narrowly tailored injunction that goes beyond "follow the law" but does not tie the hands of law enforcement who have a valid interest in conducting *constitutional* immigration enforcement actions.[92] He finds this difficult, and therefore believes that "reliance on *Lyons* is correct" to stay the injunction, and doing so allows the Court to avoid the difficult merits and/or remedial questions.[93] I respectfully disagree. The standing analysis under *Lyons*, the merits inquiry under Fourth Amendment law, and the remedial restraint required for prophylactic injunctions are all separate.[94] Where the government has announced an explicit policy to target individuals based on a small number of characteristics that, alone or taken together with one another, do not amount to reasonable suspicion, and has carried out that policy in a way that violates people's constitutional rights, *Lyons* should not bar the case from proceeding.[95]

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90 *See, e.g.*, Nicole Foy, *We Found That More Than 170 U.S. Citizens Have Been Held by Immigration Agents. They've Been Kicked, Dragged and Detained for Days*, PROPUBLICA (Oct. 16, 2025, at 12:00 ET), https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will [https://perma.cc/9XE4-EVZV] (revealing how frequently federal immigration agents erroneously detained U.S. citizens in the recent immigration crackdown); *Watch: US Citizen Describes Being Detained by ICE in His Underwear*, BBC (Jan. 20, 2026), https://www.bbc.com/news/videos/c3dm0p2ddgmo [https://perma.cc/2YS8-6AED] (narrating a traumatic instance of a U.S. citizen being ripped from his home at gunpoint by federal immigration agents). Advocates are turning to litigation to hold federal officials accountable for erroneously detaining U.S. citizens, and in one such case, a motion for preliminary injunction is pending. Complaint at 5, Venegas v. Homan, No. 1:25-cv-397-JB-C (S.D. Ala. Sep. 30, 2025) (alleging that the immigration raids violate the Fourth Amendment and exceed their statutory and regulatory authority and detailing how the lead plaintiff has been erroneously detained twice); Plaintiff's Brief in Support of Motion for Preliminary Injunction, Venegas v. Homan, No. 1:25-cv-397-JB-C (S.D. Ala. Oct. 27, 2025), Dkt. 30-1 (seeking a preliminary injunction to stop the allegedly illegal raids).

91 Courts continue to struggle with how to craft an injunction that reins in police misconduct without running afoul of constitutional and practical restraints that merit against micromanaging the affairs of an executive branch agency. *See, e.g.*, Shaw v. Smith, No. 23-3264, 2026 WL 234875, at *12–17 (10th Cir. Jan. 29, 2026).

92 Kerr, *supra* note 11.

93 *Id.*

94 The Tenth Circuit, in a recent opinion, recognized this, analyzing each component separately. *See Shaw*, 2026 WL 234875 (10th Cir. Jan. 29, 2026).

95 *See supra* Part II.

It is equally improper to do what Justice Kavanaugh appeared to do here: ignore the facts as alleged by the plaintiffs, in favor of those alleged by the defendants.[96] In sum, the district court found the facts necessary to support the temporary restraining order, and the Ninth Circuit agreed, writing a 60-plus page opinion denying the government's request to stay the lower court order.[97] Sherrilyn Ifill's powerful rebuke hits this point home.[98] The Court inserted itself without any explanation, or in the case of the Kavanaugh concurrence, without appreciation for the facts taken to be true by the lower courts (as is appropriate at this stage in the litigation)—facts that were not meaningfully disputed by the defendants. That, coupled with only an anemic analysis of *Lyons* and Fourth Amendment standards, is disturbing.

To the extent the putative class was at risk of being stopped and detained based *solely* on the four criteria enjoined by the district court in violation of the Fourth Amendment rights,[99] then a narrowly tailored injunction prohibiting detentions *solely* based on those criteria is perfectly reasonable. Professor Richard Re points out that the language the district court used in its remedial order may lack clarity in this regard.[100] Does it say that the government cannot rely on the enjoined factors alone or in combination with one another, or that it cannot rely on those factors at all, even if other reasonable suspicion factors are present and legitimate to support detention? Re posits that if it is the former, the injunction is defensible but perhaps so narrow as to be ineffective.[101] It would, say, only enjoin arrests and detentions in very specific factual circumstances, or at very specific locations, thereby leaving everyone else, everywhere else, exposed to possible misconduct by ICE.[102] If it is the latter, it may be overly broad and impermissibly enjoin many detentions that are supported by adequate reasonable suspicion.[103] Importantly, however, the government did not dispute that the "detentive stops have been based *solely* on the four

96 Washington v. Trump, 847 F.3d 1151, 1159 (9th Cir. 2017) ("At this very preliminary stage in the litigation," the TRO stage, the court should look to the "allegations in the Complaint and whatever other evidence they submitted in support of their TRO motion to carry their burden").

97 Vasquez Perdomo v. Noem, 148 F.4th 656 (9th Cir. 2025).

98 Sherrilyn Iffil, *SCOTUS, ICE Raids, & the Matter of Facts*, SHERRILYN'S NEWSL. (Sep. 8, 2025), https://sherrilyn.substack.com/p/scotus-ice-raids-and-the-matter-of?utm_source=substack&utm_medium=email [https://perma.cc/LQM7-DMQ8] (last visited Nov. 4, 2025).

99 Noem v. Vasquez Perdomo, No. 25A169, 2025 WL 2585637, at *5 (U.S. Sep. 8, 2025) (Sotomayor, J., dissenting) (describing the four criteria as Hispanic appearing, spoke Spanish or English with an accent, were found at certain business, and/or appeared to work certain types of jobs).

100 *See* Re, *supra* note 2.

101 *Id.*

102 *Id.*

103 *Id.*

enumerated factors."[104] Interpreting the language of the injunction in that context suggests the narrow reading is most appropriate.[105]

Defendants may intend to contest plaintiffs' allegations that there is a broad policy of stopping individuals based on those factors, without more. They will be allowed to do so as the case progresses. But given the early stage of the litigation, plaintiffs seemed to present enough evidence that the stops and detentions were occurring pursuant to a broader policy and/or practice to merit preliminary relief.[106]

Importantly, the lower court did not tell the Trump Administration that they can no longer conduct immigration enforcement activities. Nor did they explicitly preclude the Trump Administration from stopping and detaining people when additional reasonable suspicion factors are present. Such injunctions would likely be improper. Instead, the lower court prohibited the administration from relying only on criteria that, when taken together and without anything else, cannot support the finding of reasonable suspicion under current caselaw.[107] Limited injunctions of this nature, where the police are enjoined from doing certain things while carrying out their ongoing enforcement efforts, have been crafted in past cases without issue; and because they are so limited, they avoid the problems that Professor Kerr finds concerning.[108] Here, the federal government was enjoined *only* from relying on certain factors, without more, in deciding to detain individuals. If they have more, any stop and detention would not be contrary to the limited terms of the injunction.

To the extent the Court was concerned with the injunction being

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104 Vasquez Perdomo v. Noem, 148 F.4th 656, 672 (9th Cir. 2025) (emphasis added); *see also Vasquez Perdomo*, 2025 WL 2585637, at *8 (Sotomayor, J., dissenting) (reaffirming the dissent's support for the judgment of the lower court).

105 Professor Steve Vladeck agrees, noting that "nothing in the TRO blocked federal officials from stopping individuals who tick one or some or all of these boxes *and* exhibit some other behavior that reasonably generates 'suspicion' of undocumented status, as such. The key is when the stops have no other justification." Steve Vladeck, *A Closer Look at Justice Kavanaugh's ICE Raids Opinion*, ONE FIRST (Sep. 11, 2025), https://www.stevevladeck.com/p/bonus-177-a-closer-look-at-justice (on file with author).

106 *See* AARP v. Trump, 145 S. Ct. 1364, 1368 (2025) ("District courts should approach requests for preliminary relief with care and consideration . . . but exigent circumstances may impose practical constraints. Preliminary relief is 'customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.'" (citations omitted)).

107 *See Vasquez Perdomo*, 148 F.4th at 671–72.

108 *See, e.g.*, Goyette v. City of Minneapolis, 338 F.R.D. 109, 121–22 (D. Minn. 2021) (granting a temporary restraining order prohibiting the use of certain forms of less-than-lethal force against protestors and journalists); L.A. Press Club v. City of Los Angeles, 790 F. Supp. 3d 838, 849–50 (C.D. Cal. July 10, 2025) (same); Ortega Melendres v. Arpaio, 695 F.3d 990, 995, 997–98 (9th Cir. 2012) (preventing police from relying only on Hispanic appearance in conducting traffic stops). Sunita Patel's work examining several stop-and-frisk class actions and how the plaintiffs in those cases were able to successfully obtain workable injunctions against the police is also instructive. *See* Sunita Patel, *Jumping Hurdles to Sue the Police*, 104 MINN. L. REV. 2257 (2020).

overbroad, the proper procedure would be to say so, explain why, and perhaps even suggest further limitations on the injunction—not to discard the injunction in its entirety. Commentators are right to point out that prophylactic injunctions of this nature are disfavored.[109] But they are not forbidden.[110] They were explicitly contemplated when Congress created the statutory cause of action to sue government officials for prospective relief to prevent ongoing constitutional violations.[111] Prophylactic injunctions continue to play an important role today.

Another case involving police targeting of Hispanic individuals demonstrates how injunctive relief can and should be available even in these complex Fourth Amendment challenges to policing practices. *Ortega Melendres v. Arpaio* was a class action challenging the Maricopa County, Arizona Sheriff's Office's (MCSO) stop and detention practices.[112] The plaintiffs alleged that the MCSO, at the direction of Sheriff Joe Arpaio, had a pattern or practice of conducting "saturation patrols," which targeted Hispanic-looking motorists for traffic stops and conducting those stops and detentions without adequate reasonable suspicion.[113] Defendants argued that plaintiffs could not meet *Lyons*, in that they could not show credible threat of future stops and detentions by MCSO deputies. The district court disagreed, and the Ninth Circuit affirmed.[114] The fact that the saturation patrols were mandated by official policy and allowed for stops and detentions of anyone who appeared to be a non-citizen was key to the court's decision. Even though "the likelihood of a future stop of a particular individual plaintiff may not be 'high,'" future injury for the plaintiffs and plaintiff class was sufficiently likely to satisfy *Lyons*, given MCSO's policy and practice.[115] The district court enjoined the "Defendants from detaining any person based solely on knowledge, without more, that the person is in the country without lawful authority" but made clear that MCSO was not enjoined from "enforcing valid state laws, or detaining individuals when officers have reasonable suspicion that individuals are violating a state criminal law."[116]

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109 *See* Re, *supra* note 2.

110 *See* cases cited *supra* note 108 (providing examples of injunctions restricting specific behavior by law enforcement, reducing violations of Fourth Amendment rights without infringing on officers' ability to do their job); *see also* Allee v. Medrano, 416 U.S. 802, 815 (1974) ("Where, as here, there is a persistent pattern of police misconduct, injunctive relief is appropriate.").

111 *See* 42 U.S.C. § 1983 (creating cause of action against those who, acting under color of state law, violate an individual's federal statutory or constitutional rights, and specifically providing for prospective relief as a potential remedy).

112 *Ortega Melendres*, 695 F.3d 990.

113 *Id.* at 997–98.

114 *Id.* at 995–96.

115 *Id.* at 998.

116 Ortega-Melendres v. Arpaio, 836 F. Supp. 2d 959, 992 (D. Ariz. 2011).

The Ninth Circuit in *Vasquez Perdomo* saw the similarities between that case and *Melendres*, although in the former the stops and detentions were carried out by ICE/DHS officers directly and the latter involved only local law enforcement operating pursuant to a 287(g) agreement.[117] Like *Melendres*, the *Vasquez Perdomo* plaintiffs challenge an official policy directing enforcement officers to target people on the basis of their looks and the places they frequent. And like *Melendres*, while the individual named plaintiffs may not have a high likelihood of being subjected to an identical unconstitutional stop and detention in the future, the risk they and the entire putative class face is sufficient to clear *Lyons*, given the official policy. Curiously, *Melendres* is cited nowhere in the Supreme Court's ruling granting the stay—neither in the concurring opinion, nor in Justice Sotomayor's dissent. Ignoring Ninth Circuit precedent may not be unusual for the Supreme Court, but given the direct parallels between that case and *Perdomo*, it seems at least worth considering before deciding to grant the government their requested stay.

CONCLUSION

So what does this all mean? As a matter of precedent, nothing. Justice Kavanaugh's concurring opinion may have been an attempt to shed light on the majority's reasoning in issuing the stay, but in the end, it is only a concurring opinion. No Justices in the majority that granted the stay signed on to the concurrence, leaving the public to wonder whether the other justices agreed with Justice Kavanaugh on *Lyons* but not the Fourth Amendment analysis, or vice versa. The practical effect is, of course, that ICE is free to resume its raids and conduct detentions as it sees fit while the case continues to play out in the lower courts. Those who might be swept up in such raids, whether justifiably or not, will have to make important daily calculations about whether it is safe to attend work, go shopping, take their children to school, visit the doctor, ride public transit, and more.

But the practical effect may also go beyond ICE's actions in this one jurisdiction. Indeed, since the Supreme Court issued its stay in early September 2025, ICE has begun conducting immigration raids in numerous other cities, including Washington, D.C., Minneapolis, and Chicago; more are expected in New York City, San Francisco, and other Democratically led

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117 Vasquez Perdomo v. Noem, 148 F.4th 656, 674–75 (9th Cir. 2025) (citing to *Melendres*, analogizing the facts in the present case to those present in *Melendres*, and rejecting Defendants' argument that a formal written policy is necessary to demonstrate standing under *Lyons*). Section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), allows for partnerships between ICE and local law enforcement for the purposes of carrying out immigration enforcement. U.S. IMMIGR. & CUSTOMS ENF'T, PARTNER WITH ICE THROUGH THE 287(G) PROGRAM, https://www.ice.gov/287g [https://perma.cc/9R5H-NSXN] (last visited Nov. 10, 2025) (explaining the 287(g) agreement process).

cities.[118] Between my initial writing of this Case Comment and the time it is published—a scant four months—there there will be countless new examples of detentions of people without reasonable suspicion, including American citizens. Local law enforcement may be further emboldened in their own stop and detention practices, even outside the immigration context. They may feel reassured by Justice Kavanaugh's extremely restrictive view of standing for injunctive relief or may feel his opinion justifies the targeting of minority groups, provided there is some other reason the police can offer for pursuing those groups beyond their race. For example, we could see a resurgence of broken windows policing—a long decried practice of policing low-level misconduct in predominantly minority communities under the guise that it will improve public safety overall.[119] Courts may view the Kavanaugh concurrence as green-lighting motions to dismiss other law enforcement cases on *Lyons* grounds.[120] Judges in a recently decided case in the Tenth Circuit, *Shaw v. Smith*, which challenged the Kansas Highway Patrol's practice of detaining motorists without reasonable suspicion, did not

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118 *See* Sophia Tareen, *Immigration Agents Become Increasingly Aggressive in Chicago*, PBS NEWS (Oct. 6, 2025, at 14:07 ET), https://www.pbs.org/newshour/nation/immigration-agents-become-increasingly-aggressive-in-chicago [https://perma.cc/U5XE-V4ZC] (detailing federal raids in Chicago); Anna Betts, *New York Officials Condemn Manhattan ICE Raid: 'This Creates Fear and Chaos'*, THE GUARDIAN (Oct. 22, 2025, at 11:28 ET), https://www.theguardian.com/us-news/2025/oct/22/new-york-chinatown-ice-raid-reaction [https://perma.cc/F9D7-AMNG] (detailing an increase in federal raids in New York City); Matthais Gafni, Michael Barba & St. John Barned-Smith, *Major Federal Immigration Operation Headed to San Francisco Bay Area*, S.F. CHRONICLE (Oct. 22, 2025, at 20:20 PT), https://www.sfchronicle.com/bayarea/article/sf-immigration-operation-21114328.php [https://perma.cc/P59Q-E5G4] (detailing federal orders to dispatch ICE agents to the San Francisco Bay area); Hamed Aleaziz, Bret McDonald & Amogh Vaz, *How Washington Became a Testing Ground for ICE*, N.Y. TIMES (Oct. 1, 2025), https://www.nytimes.com/2025/10/01/us/politics/washington-dc-ice.html [https://perma.cc/396S-FBTX] (detailing raids by federal agents in Washington, D.C.).

119 *See* BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING (2001) (debunking the "broken windows" theory of crime as empirically unvalidated); Daniel T. O'Brien, Chelsea Farwell & Brandon C. Welsh, *Looking Through Broken Windows: The Impact of Neighborhood Disorder on Aggression and Fear of Crime Is an Artifact of Research Design*, 2 ANN. REV. OF CRIMINOLOGY 53 (2019) (discrediting former studies that supported broken windows policing, and finding that using proper methodology, there is no consistent evidence that overpolicing communities for quality of life offenses reduces more severe crime or cures negative neighborhood attitudes).

120 Fortunately, it appears that Justice Kavanaugh's concurrence is not yet playing a large role in district courts' standing analysis. *See, e.g.*, Tincher v. Noem, No. 0:25-cv-04669 (KMM/DTS), 2026 WL 126375, at *19–21 (D. Minn. Jan. 16, 2026) (finding plaintiffs had standing to challenge ICE officers' actions in arresting protestors); Escobar Molina v. Dep't Homeland Sec., No. CV 25-3417 (BAH), 2025 WL 3465518, at *38 (D.D.C. Dec. 2, 2025) (entering preliminary injunction in case challenging ICE actions in D.C.). What appellate courts decide to do, on the other hand, is a different story; in the *Tincher* litigation, the Eighth Circuit has already granted a stay of the district court's injunction. *See* Jonathan Allen & Nate Raymond, *US Appeals Court Lifts Order Curbing Immigration Agents' Tactics Against Minnesota Protesters*, REUTERS (Jan. 22, 2026, at 04:45 ET), https://www.reuters.com/world/us-appeals-court-pauses-lower-court-order-restraining-immigration-agents-use-2026-01-21 [https://perma.cc/U5PY-GZY2].

take the bait. Instead, the Tenth Circuit panel unanimously found the plaintiffs had standing for injunctive relief, relying on *Melendres* and other precedent to distinguish *Lyons*, saying nothing at all about *Velasquez Perdomo*.[121]

The point is, precedential or not, the errors in Justice Kavanaugh's concurrence will have downstream consequences both practically and doctrinally. Normatively, the courts can and should do better. As the litigation proceeds and subsequent stages shift burdens amongst the parties, hopefully some of these errors can be corrected.

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121 *See* Shaw v. Smith, No. 23-3264, 2026 WL 234875, at *7–9 (10th Cir. Jan. 29, 2026). *See generally* Court Cases: Shaw v. Jones, ACLU OF KAN. (Oct. 8, 2021), https://www.aclukansas.org/cases/shaw-v-jones [https://perma.cc/LQ7F-KLHG] (providing an overview of the facts and procedural posture of *Shaw v. Jones*).