

OPINION

The Supreme Court allows racial profiling

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On Sept. 15, the Supreme Court validated the use of racial and ethnic profiling in the United States. Using what is known as the emergency (or shadow) docket, the majority reversed a district court and 9th Circuit Court of Appeals holding that law enforcement agents could not detain people solely based on their race, the language they speak, their place of employment or where they gathered. The majority did not explain their decision, as happens often on the shadow docket. The three dissenting justices, on the other hand, issued a stinging indictment of the majority's position as well as Justice Brett Kavanaugh's feeble concurrence.

The case arose in Los Angeles when Immigration and Customs Enforcement agents began enforcing the mass deportation orders of the president. As described by Justice Sonia Sotomayer, ICE "teams of armed and masked agents pulled up to car washes, tow yards, farms, and parks and began seizing individuals on sight, often before asking a single question." This was

done without judicial warrants.

The plaintiffs, five individuals and several human rights organizations, argued in court that the raids likely violated the Fourth Amendment, which protects people from unreasonable searches and seizures. Los Angeles and several other jurisdictions joined the case as well.

The district court issued a temporary restraining order barring the government from detaining persons solely because of apparent race or ethnicity; speaking Spanish or English with an accent; presence in a particular location like a bus stop, car wash or agricultural site; or the type of work a person does. The 9th Circuit agreed with the district judge that ending the TRO would cause irreparable harm to the plaintiffs. Six members of the Supreme Court disagreed with the lower courts and withdrew the TRO. It is important to note that the decision on the TRO does not mean the end of the litigation. The merit hearings that determine if the government has indeed violated the Fourth Amendment and other due process offenses are still to come. The action taken by the six justices is disheartening, however, and makes it more likely that the government will prevail.

Lifting the TRO affects not only immigrants but citizens as well. It will be much more difficult to hold ICE and other federal agents accountable for their actions now. While this case directly affects Los Angeles, ICE is likely to broaden its use of racial and ethnic profiling in other jurisdictions. In the meantime, those meeting any of the four criteria used by ICE will be targets, whether they are U.S. citizens, permanent residents or undocumented migrants.

Kavanaugh claimed in his concurrence that “If the officers learn that the individual they stopped is a U. S. citizen or otherwise lawfully in the United States, they promptly let the individual go.” This is patently inaccurate, as seen in the experiences of some of the plaintiffs. Sotomayor described one citizen’s experience: “A masked agent ordered Gavidia to ‘[s]top right there’ and began asking him questions ... Agents then asked Gavidia whether he is ‘American at least three times’; three times, Gavidia affirmed that he is ... Unsatisfied, the agents asked Gavidia for the name of the hospital in which he was born, and when Gavidia could not immediately recall, the agents racked a rifle, took Gavidia’s phone, ‘pushed [him] up against the metal gated fence, put [his] hands behind [his] back, and twisted [his] arm.’”

Racial and ethnic profiling is leading to fear of the authorities, even among U.S. citizens of Latino descent. Sotomayor recounted the story of a U. S. citizen who “worries that as a visibly Latino man, he could be detained” if he does not carry his passport, but “decided against [doing so] because he believes that as an American, he should not have to live like that in his own country.”

Sotomayor eloquently concluded: “The Fourth Amendment protects every individual’s constitutional right to be ‘free from arbitrary interference by law officers’ ... After today, that may no longer be true for those who happen to look a certain way, speak a certain way, and appear to work a certain type of legitimate job that pays very little. Because this is unconscionably irreconcilable with our Nation’s constitutional guarantees, I dissent.”

I am with Sotomayor, and I hope all Americans understand her point. Once the Fourth Amendment is trampled upon, it is not just immigrants who are in danger. All of us are at risk, and all of us should make our views known to our political leadership.

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