DECIDING IN THE DARK: NOEM V. PERDOMO AND THE FOURTH AMENDMENT'S DRIFT ON THE SHADOW DOCKET

Diana Lachell Copeland*

I. INTRODUCTION

On November 21, 2018, Jilmar Ramos-Gomez, a United States citizen and Marine Corps veteran living in Michigan, experienced a post-traumatic stress mental health episode and was arrested by local police on the roof of a hospital.[1] An off-duty police officer contacted Immigration and Customs Enforcement (ICE) to verify his immigration status, despite no apparent basis to suspect he was undocumented other than his name and perceived ethnicity.[2] Although federal authorities possessed documentation confirming his citizenship, Ramos-Gomez was transferred to ICE custody and detained for three days before being released. Encounters like this are becoming all too frequent

* Juris Doctor Candidate at Southern University Law Center, Class of 2026. A decorated United States Army veteran and former logistics officer, the Author brings a service-driven perspective to her legal scholarship, grounded in discipline, leadership, and a commitment to justice. The Author extends her sincere gratitude to Maya Jones, Editor-in-Chief of the Southern University Law Review, whose leadership, responsiveness, and unwavering support were instrumental throughout the publication process, and to the Law Review Editorial Board for selecting this Article. The Author is especially grateful to Chancellor John Pierre and Professor Michael Garrard, whose personal outreach and encouragement were instrumental in her decision to attend Southern University Law Center. The Author also wishes to thank the faculty of Southern University Law Center for their collective guidance, mentorship, and commitment to developing thoughtful and capable advocates. Finally, the Author expresses her deepest appreciation to her family, mentors, and friends for their steadfast love, encouragement, and belief in her throughout her law school journey. Above all, the author gives all glory and thanks to God whose grace and guidance has sustained her throughout her journey.

1. Ramos-Gomez v. Adducci, No. 2:19-cv-13475-LJM-MJH, 2020 U.S. Dist. LEXIS 186519 (E.D. Mich. Oct. 8, 2020).

2. ACLU of Mich., *ACLU Sues ICE Over U.S. Marine Corps Veteran Jilmar Ramos-Gomez's Case*, https://www.aclumich.org/press-releases/aclu-sues-ice-us-marine-corps-veteran-jilmar-ramos-gomezs-case/ (last visited February 22, 2026)

post *Noem* and illustrate the constitutional risk that arises when suspicion is based on identity rather than behavior.[3]

The Fourth Amendment safeguards against unreasonable seizures, but this protection weakens when demographic assumptions replace individual justification. Immigration enforcement frequently tests this constitutional limit, where broad stereotypes about an individuals' status threaten to replace individual suspicion as the constitutional standard.[4]

In 1968, the Supreme Court decided *Terry v. Ohio*, creating a narrow exception to the Fourth Amendment's probable cause requirement that permitted brief investigative stops based on reasonable suspicion.[5] The Court emphasized that such authority was carefully limited. Officers were required to identify "specific and articulable facts" tied to a particular individual, and courts were instructed to scrutinize police conduct closely to prevent erosion of Fourth Amendment protections.[6] From its inception, *Terry* was controversial. Despite its narrow scope, *Terry* has long occupied an uneasy position in Fourth Amendment jurisprudence. Critics cautioned that adopting a standard below probable cause risked expanding police discretion, particularly against marginalized communities. Justice Douglas warned that permitting seizures on less than probable cause threatened to dilute the Fourth Amendment's core protections. Subsequent jurisprudence would reveal the force of that concern. [7]

More than half a century later, the Supreme Court's emergency order in *Noem v. Perdomo* signals a marked departure from *Terry's* original framework.[8] Issued without a full briefing or oral argument, the Court stayed a lower court injunction that barred roving immigration patrols based on contextual indicators

3. Noem v. Perdomo, 146 U.S. (2025).

4. *See* United States v. Sokolow, 490 U.S. 1, 12 (1989). ("By requiring reasonable suspicion as a prerequisite to such seizures, the Fourth Amendment protects innocent persons from being subjected to 'overbearing or harassing' police conduct carried out solely on the basis of imprecise stereotypes of what criminals look like, or on the basis of irrelevant personal characteristics such as race." (citing Terry v. Ohio, 392 U.S. 1, 14-15 & n.11 (1968)).

5. Terry v. Ohio, 392 U.S. 1 (1968).

6. *Id.* at 21–22.

7. *Id.*

8. Noem v. Perdomo, 146 U.S. (2025).

such as language, appearance, and location.[9] Although framed as a routine application of reasonable suspicion principles, the order extended *Terry*'s logic far beyond individualized conduct and recasts suspicion as a function of demographic probability.[10]

Noem v. Perdomo represents a pivotal moment in Fourth Amendment jurisprudence.[11] It reflects the emergence of a probabilistic model of constitutional policing in which reasonableness is measured by statistical likelihood rather than individualized behavior. The decision thus exemplifies constitutional drift, the gradual redefinition of constitutional meaning through procedural shortcuts and unreasoned judicial action on the shadow docket.[12]

Section II traces the evolution of the stop-and-frisk doctrine from *Terry* through its extension into immigration contexts. Section III situates *Noem* within that trajectory and demonstrates how the decision constitutes probabilistic suspicion. Section IV examines the constitutional and policy implications of this doctrinal shift. This Note concludes by addressing the dangers posed by constitutional drift on the shadow docket and the need to reaffirm individualized suspicion as the Fourth Amendment baseline.

This author affirms that individualized suspicion is not merely a doctrinal preference but a constitutional requirement and proposes that courts must reject efforts to redefine reasonableness through demographic probability. This Note argues that *Noem v. Perdomo* represents a dangerous form of constitutional drift, one that risks converting the Fourth Amendment from a shield protecting individuals into a mechanism for managing populations. Doctrinal recalibration is necessary to restore the Fourth Amendment's commitment to individualized liberty.

9. *Id.*

10. Terry v. Ohio, 392 U.S. 1 (1968).

11. Noem v. Perdomo, 146 U.S. (2025).

12. See Rory Little, *"Roving Patrols," Reasonable Suspicion, and Perdomo*, SCOTUSblog (Sept. 18, 2025); Siegal, supra note 2.

II. THE STOP AND FRISK DOCTRINE: FROM *TERRY* TO IMMIGRATION ENFORCEMENT

A. The Genesis of the Doctrine: Terry v. Ohio (1968) and Its Companions

The legal doctrine of "stop and frisk"[13] as articulated in *Terry v. Ohio* comprises two analytically distinct components: the investigative "stop" and the protective "frisk." A "stop" pertains to a temporary investigative detention of an individual conducted by law enforcement, which must be justified by reasonable suspicion. This suspicion involves specific and articulable facts, along with rational inferences derived from those facts, indicating that criminal activity may be afoot.[14] This threshold is less stringent than probable cause, yet it necessitates a factual foundation beyond mere intuition or unparticularized suspicion.[15]

A "frisk" constitutes a limited pat-down of an individual's outer clothing, conducted following a stop. Such a search is constitutionally permissible solely when the officer has a reasonable belief, grounded in specific facts, that the individual is armed and poses an immediate danger. The principal objective of the frisk is not evidentiary in nature, but rather to ensure the safety of law enforcement personnel and the public by identifying and neutralizing potential weapons.[16]

The U.S. Supreme Court in *Terry* emphasized that both the stop and the frisk must each independently satisfy the Fourth Amendment's reasonableness standard. [17] The legality of the stop hinges on its justification at its inception, whereas the permissibility of the frisk relies on the reasonable belief that the individual is armed and dangerous[18]

13. Terry v. Ohio, 392 U.S. 1, 21-24 (1968).

14. *Id.* See. State v. Andrade-Reyes, 309 Kan. 1048, Arizona v. Johnson, 555 U.S. 323, Commonwealth v. Hicks, 652 Pa. 353.

15. Terry v. Ohio, 392 U.S. 1, 21-24 (1968).

16. Id.

17. Terry v. Ohio, 392 U.S. 1 (1968).

18. State v. Andrade-Reyes, 309 Kan. 1048, Arizona v. Johnson, 555 U.S. 323, Commonwealth v. Hicks, 652 Pa. 353.

In *Terry,* the Supreme Court created a new category of "reasonable" searches, grounded in reasonable suspicion rather than probable cause.[19] In *Terry*, a police officer observed three men repeatedly peering into a store window and suspected a robbery in progress. The officer stopped them, conducted a limited pat-down, and discovered a weapon. The Court upheld the search, concluding that an officer may conduct a brief investigatory stop when the officer can point to "specific and articulable facts" giving rise to reasonable suspicion that criminal activity is afoot.[20] The Court reasoned that it would be unreasonable to require that a police officer await the glint of steel before acting to preserve his own safety.[21]

Crucially, the *Terry* Court emphasized that this authority was narrowly confined and that the purpose of the stop was investigative, while the purpose of the frisk was strictly protective, to allow officers to pursue their investigation without fear of violence.[22] Chief Justice Warren cautioned that courts must carefully scrutinize such encounters to prevent the erosion of the Fourth Amendment's protections through uncritical deference to law enforcement judgment.[23] Justice Douglas, dissenting, cautioned that expanding police discretion beyond probable cause risked fraying the Fourth Amendment to tatters.[24]

The Court reaffirmed these limitations in companion cases. In *Sibron v. New York*, the Court invalidated a frisk where the officer could not articulate any reason to believe the suspect was armed and emphasized that a protective search requires more than generalized suspicion or association.[25] By contrast, in *Peters v. New York*, the Court upheld a stop, emphasizing the officer's specific observations of the suspect's conduct and reaffirming the requirement that suspicion be grounded in individualized facts. Together, these cases established that reasonable suspicion must be particularized and grounded in observable behavior.

19. Terry v. Ohio, 392 U.S. 1, 21-24 (1968).
20. *Id.* at 21–22.
21. *Id.*
22. *Id.* at 24.
23. *Id.* at 15.
24. *Id.* at 38 (Douglas, J., dissenting).
25. Sibron v. New York, 392 U.S. 40, 62–63 (1968).

Subsequent decisions elaborated on *Terry* without abandoning its core constraints.

As the doctrine matured, the Court confronted efforts to justify stops based on generalized profiles rather than individualized conduct. In *Brown v. Texas*, the Court invalidated a stop based solely on the defendant's presence in a high crime area, holding that such reasoning failed to provide the individualized suspicion required by the Fourth Amendment.[26] Similarly, in *Reid v. Georgia*, the Court rejected an airport stop premised on a broad drug-courier profile, warning that such profiles "describe a very large category of presumably innocent travelers."[27] These cases underscore that reasonable suspicion cannot rely on characteristics common among lawful populations.

Subsequent cases refined the reasonable suspicion inquiry while preserving the requirement of individualization. In *United States v. Arvizu*, the Court directed lower courts to assess reasonable suspicion based on the "totality of the circumstances" rather than isolating individual factors.[28] However, *Arvizu* did not dispense with the requirement that suspicion be grounded in particularized observations; rather, it cautioned courts against second-guessing reasonable inferences drawn from observed conduct.[29]

Following *Terry*, the Court gradually expanded the range of contextual factors officers could consider when forming reasonable suspicion. In *Illinois v. Wardlow*, the Court held that an individual's unprovoked flight in a high-crime area could contribute to reasonable suspicion. Although the Court reiterated that presence in a high crime area alone is insufficient, the decision nonetheless sanctioned reliance on environmental context as constitutionally relevant.[30] *Wardlow* marked a subtle but important shift. Whereas *Terry* emphasized conduct suggesting imminent criminal activity, *Wardlow* permitted suspicion to arise from a combination of location and reaction to police presence. Dissenting opinions warned that this framework risked converting geography into a proxy for criminality, effectively subjecting

26. Brown v. Texas, 443 U.S. 47, 52 (1979).
27. Reid v. Georgia, 448 U.S. 438, 441 (1980) (per curiam).
28. United States v. Arvizu, 534 U.S. 266, 273–75 (2002).
29. *Id.* at 277.
30. Illinois v. Wardlow, 528 U.S. 119 (2000).

residents of heavily policed neighborhoods to diminished Fourth Amendment protections.

The implications of *Wardlow* would reverberate through subsequent jurisprudence, normalizing the use of contextual cues that describe environments rather than individuals. This doctrinal shift laid the groundwork for later reliance on demographic and situational indicators, an evolution that is vital for assessing *Noem*.

B. Terry in Transit: From Traffic Stops to Routine Encounters

The Court extended *Terry's* reach beyond traditional street encounters in *Arizona v. Johnson*, holding that law enforcement officers may frisk a vehicle passenger during a lawful traffic stop when they possess reasonable suspicion that the passenger is armed and dangerous.[31] Justice Ginsburg's unanimous opinion clarified that such a frisk must satisfy two conditions: (1) the stop must be lawful, and (2) the officer must reasonably suspect the person poses a threat. This articulation cemented *Terry's* two-prong test as the default standard for virtually all law enforcement encounters short of arrest.

However, the very elasticity that made *Terry* so enduring also made it perilous. By defining reasonableness through context and experience, the Court allowed law enforcement culture to shape constitutional boundaries. Over time, what began as a narrow safety exception metastasized into a broad license for preventive detentions and frisks predicated on subjective intuition. Empirical studies of New York City's stop and frisk programs demonstrated that this doctrine, when translated into policy, disproportionately burdened minority communities without producing equivalent public safety benefits.[32] This decision sanctioned the extension of *Terry* frisks into routine, noncriminal encounters.

Taken together, these stops reflect a gradual doctrinal shift from reactive policing toward preventive risk management.[33] Stops increasingly became tools for anticipating danger rather

31. Arizona v. Johnson, 555 U.S. 323 (2009).

32. Noem v. Perdomo, 146 U.S. (2025).

33. Illinois v. Wardlow, 528 U.S. 119 (2000); Arizona v. Johnson, 555 U.S. 323 (2009).

than responding to observed wrongdoing. While these cases stopped short of abandoning particularity, they expanded the universe of permissible inference in ways that would later facilitate probabilistic reasoning.

C. From Urban Streets to the Border

The Supreme Court's 1975 decision in *United States v. Brignoni-Ponce* marked a watershed moment in the migration of *Terry's* logic to immigration enforcement.[34] In that case, Border Patrol agents in southern California stopped a vehicle near the Mexican border based solely on the occupants' apparent Mexican ancestry.[35] The Court held that while agents may stop vehicles near the border based on specific articulable facts that suggest illegal presence, ethnicity alone cannot justify a stop.[36] *Brignoni-Ponce* imported *Terry's* two-pronged framework into the border context, while explicitly condemning racial profiling as constitutionally impermissible. Despite this limiting language, *Brignoni-Ponce* broadened the scope of the government's authority to execute brief immigration detentions based on a combination of factors, including location, proximity to the border, and ethnic characteristics. The Supreme Court held that officers on roving patrol may stop vehicles if they are aware of specific, articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain individuals who may be illegally in the country. Effectively, the Court opened a new front for *Terry* analysis: a space where the Fourth Amendment's individualized suspicion requirements yielded to the imperatives of border security and national sovereignty.[37]

D. From Individual Suspicion to Demographic Probability: The Path to Noem v. Perdomo

The Supreme Court's recent shadow docket jurisprudence in *Noem v. Perdomo* extended *Terry's* rationale from contextual suspicion to categorical assumption.[38] Under the directive

34. United States v. Brignoni-Ponce, 422 U.S. 873, 885-87 (1975).
35. *Id.* at 875-876.
36. United States v. Brignoni-Ponce, 422 U.S. 873 (1975).
37. *Id.*
38. Noem v. Perdomo 602 U.S. (2025).

challenged in *Noem*, officers may detain individuals for "observable indicators of unlawful presence,"[39] including accent and demeanor. In effect, the program resurrects the very reasoning that *Brignoni-Ponce* repudiated: that ethnicity and language can serve as probabilistic proxies for criminality. [40]

The connection between *Terry* and *Noem* primarily lies in their methodology rather than their substance. Both doctrines emerged from judicial efforts to balance constitutional rights against perceived public needs. Each have replaced pragmatic compromise with reasoned principles. Moreover, both have redefined "reasonableness" as contingent upon context and authority, rather than solely based on textual interpretation and constraints. *Terry's* approach to urban policing mirrors *Noem's* stance on immigration enforcement: both establish a constitutional framework based on suspicion that is limited in theory, but limitless in practice.

Overall, these decisions establish a consistent doctrinal throughline: the Fourth Amendment tolerates brief investigatory stops only when the government can articulate individualized reasons for suspecting a particular person of wrongdoing or danger. This framework, grounded in particularity, restraint, and judicial oversight, sets the baseline against which *Noem v. Perdomo* must be evaluated. As the next section demonstrates, *Noem* departs from these principles by substituting probabilistic inference for individualized suspicion.

III: CONSTITUTIONALIZING SUSPICION: *NOEM V. PERDOMO*

A. From Particularized Suspicion to Probabilistic Policing

At its core, *Terry* required government intrusion to be justified by facts particular to the individual seized.[41] The doctrine's legitimacy depended on that requirement.

In *Noem v. Perdomo*, the Court's emergency stay order quietly untethered reasonable suspicion from individualized conduct by authorizing investigative stops premised on contextual

39. *Id.*

40. Avi Siegal, *Balancing in the Shadows of Noem v. Vasques Perdomo,* Yale J. on Reg.: Notice & Comment (Sept. 24, 2025).

41. Terry v. Ohio, 392 U.S. 1, 21–22 (1968).

indicators such as language, appearance, location, and occupation.[42]

Justice Kavanaugh's concurrence reasoned that "common sense" and officer experience provide contextual cues for reasonable suspicion.[43] This common sense reconceptualization transforms reasonable suspicion into a predictive tool. As Professor Rory Little explains, the logic endorsed in *Noem* "embraces a probabilistic theory of reasonable suspicion and abandons the requirement of individualized suspicion."[44] The Fourth Amendment then shifts from protecting persons to managing populations.

B. Erosion of Individualized Suspicion

The Court has long rejected suspicion based on generalized traits. *Brignoni-Ponce* warned against casting suspicion on large segments of the public, and *Brown* reinforced the requirement of individualized facts.[45]

Noem undermines those constraints by permitting reliance on aggregated contextual cues. Justice Kavanaugh's concurrence further revives the very logic *Brignoni-Ponce* condemned[46] proclaiming that "high number and percentage of illegal immigrants in the Los Angeles area [who] tend to gather in certain locations [and] often work in certain kinds of jobs". By collapsing ethnicity and geography into "circumstances", the concurrence invites a standard of generalized suspicion indistinguishable from profiling. This is a "significant change in the reasonable suspicion

42. *Rory Little, "Roving Patrols," Reasonable Suspicion, and Perdomo, SCOTUSblog (Sept. 18, 2025).*

43. Noem v. Perdomo 146 U.S. 1 (2025). (Kavanaugh, J., concurring). Justice Kavanaugh's concurrence underscored the significance of "common sense," yet neglected to articulate a precise definition of the term. The enduring observation that common sense is, paradoxically, not universally shared remains applicable. Within this legal context, it is imperative to delineate what constitutes "common sense" when law enforcement officers determine whether to initiate a stop.

44. *Rory Little, "Roving Patrols," Reasonable Suspicion, and Perdomo, SCOTUSblog (Sept. 18, 2025).*

45. United States v. Brignoni-Ponce, 422 U.S. 873 (1975).

46. Michelle M. Mello, *Whose Common Sense? Some Reflections on Noem v. Vazquez Perdomo*, Stan L. Sch. Legal Aggregate (Sept. 24, 2025).

standard," one that abandons *Terry's* demand for particularity in favor of group-based inference.[47]

This transformation alters the constitutional subject itself. Under *Terry*, suspicion attached to a person based on observed conduct. Under *Noem*, suspicion attaches based on perceived group membership. The unit of constitutional analysis shifts from the individual to the demographic proxy.

C. Judicial Rationalization and the Turn to "Common Sense"

The concurrence's reliance on common sense plays a critical role in this doctrinal shift. Rather than citing empirical data or articulable facts, the opinion appeals to intuition, an innovation of what Stanford Professor Michell M. Mello calls "majoritarian common sense masquerading as constitutional reasoning."[48] By elevating "common sense" to the level of constitutional justification, *Noem* revives the same rhetorical device that once rationalized *Terry's* furtive movement in high crime areas. In both instances, subjectivity is rebranded as objectivity. Elevating intuition over articulation reduces the Fourth Amendment inquiry to plausibility rather than fact. Judicial authority shifts toward officers, and constitutional constraints weaken.

D. The Displacement of Judicial Restraint

Terry envisioned judicial review as a safeguard against arbitrary policing. Chief Justice Warren emphasized that courts must independently assess the reasonableness of police conduct.[49] Chief Justice Warren's opinion in *Terry* conceived of judicial review as the essential check on discretion, warning that courts must not "approve the conduct of the police simply because the officer acted in good faith."[50] In *Noem*, the Court defers almost entirely to executive judgment.[51] Its silence, both procedural and doctrinal, signals a willingness to let enforcement exigency define

47. Rory Little, "*Roving Patrols", Reasonable Suspicion, and Perdomo*, SCOTUSblog (Sept. 18, 2025).

48. Michelle M. Mello, *Whose Common Sense? Some Reflections on Noem v. Vázquez Perdomo*, Stan. L. Sch. Legal Aggregate (Sept. 24, 2025).

49. Terry v. Ohio, 392 U.S. 1, 15 (1968).

50. *Id.* at 21–22.

51. Noem v. Perdomo 146 U.S. 1 (2025). (Kavanaugh, J., concurring).

constitutional scope. By deferring almost entirely to executive judgment, the Court diminishes its own role as a constitutional check.

E. The Probabilistic State and Constitutional Drift

Noem exemplifies what this Note terms the probabilistic state, a governance model in which constitutional reasonableness is measured by statistical likelihood rather than individualized wrongdoing. Liberty becomes contingent on demographic inference.

Justice Kavanaugh's concurrence exemplifies this transformation. He reasoned that because undocumented immigrants "tend to gather" in certain areas and "often work in certain kinds of jobs," officers could reasonably infer unlawful presence from these contextual facts.[52] The argument replaces *Terry*'s insistence on "specific and articulable facts" with an actuarial logic: if a person's demographic characteristics correlate with illegality, then the correlation itself provides the constitutionally sufficient cause for intrusion.[53]

Noem accelerates this evolution through both substance and procedure. Substantively, it replaces *Terry*'s factual inquiry with a probabilistic heuristic. Procedurally, it achieves that transformation through the shadow docket, bypassing the deliberation and public reasoning that normally legitimate doctrinal change. As Avi Siegal explains, this is the essence of constitutional drift, the redefinition of rights not by explicit overruling but by silent accretion.[54] Each emergency order that treats demographic probability as reasonable suspicion nudges constitutional meaning further from its text, until the exception swallows the rule.

The probabilistic state operates as both the instrument and the outcome of constitutional drift. It transforms *Terry*'s narrow compromise, crafted to balance safety with liberty, into a general permission slip for preventive policing. And because this transformation occurs under the procedural veil of the shadow

52. *Id.* (Kavanaugh, J., concurring).

53. Terry v. Ohio, 392 U.S. 1, 15 (1968).

54. *See* Avi Siegal, *Balancing in the Shadows of Noem v. Vásquez Perdomo*, Yale J. on Regul.: Notice & Comment (Sept. 24, 2025).

docket, it lacks the transparency, contestation, and reason-giving that sustain constitutional legitimacy. In this new paradigm, the Constitution evolves not through argument or amendment but through inertia, its text unchanged, its meaning quietly altered.

As the next section demonstrates, these doctrinal changes carry profound policy consequences, reshaping immigration enforcement, federalism, and equal protection in ways that extend far beyond the facts of the case.

III. POLICY IMPLICATIONS: FROM STOP AND FRISK TO STATUS AND FRISK

The doctrinal shift reflected in *Noem v. Perdomo* carries consequences that extend far beyond the immediate context of immigration enforcement.[55] By transforming reasonable suspicion into a probabilistic inquiry grounded in demographic inference, the decision reshapes how police power may be exercised and alters the lived experience of constitutional rights. The result is a model of enforcement that increasingly treats status, rather than conduct, as the trigger for investigative intrusion.

A. The Migration of Stop-and-Frisk Logic into Immigration Enforcement

Noem accelerates the migration of the stop-and-frisk doctrine from traditional criminal policing into civil immigration enforcement. Historically, *Terry* was justified by the exigencies of officer safety during street encounters involving suspected criminal activity.[56] *Noem* repurposes that logic to authorize roving immigration patrols, blurring the line between criminal investigation and administrative enforcement.[57]

The policy consequences of this doctrinal shift are not merely theoretical. The immediate policy consequences of *Noem* are the transportation of urban policing logic into immigration enforcement.[58] What began in *Terry* as a rule for street-level encounters has now crossed into the realm of border and

55. Noem v. Perdomo, 146 U.S. (2025).

56. Terry v. Ohio, 392 U.S. 1, 23–24 (1968).

57. Rory Little, *"Roving Patrols," Reasonable Suspicion, and Perdomo*, SCOTUSblog (Sept. 18, 2025).

58. Noem v. Perdomo, 146 U.S. (2025).

demographic regulation. In this new context, the justifications once tied to officer safety, furtive gestures, concealed weapons, and imminent danger are replaced by contextual indicators of unlawful presence, such as accent, clothing, or community association.[59]

Noem accelerates the migration of stop-and-frisk logic into civil immigration enforcement. Immigration violations are civil in nature, yet *Noem* permits investigative stops that mirror criminal seizures. The line between criminal investigation and administrative enforcement blurs. The effect is to normalize intrusive encounters not based on suspected wrongdoing, but on perceived immigration status. As scholars have observed, this expansion risks converting presence itself into a basis for suspicion.[60]

B. The Normalization of Demographic Suspicion

By treating language, appearance, location, and occupation as constitutionally relevant indicators, *Noem* legitimizes demographic suspicion as reasonable.

By validating detentions based on "common sense" contextual cues, the Court implicitly affirms that outward signs of difference can constitute articulable facts. This logic transforms appearance and language into legally cognizable evidence. The danger is not confined to immigration enforcement. Once the Court treats cultural and linguistic traits as legitimate grounds for suspicion, those markers can migrate into other policing contexts such as counterterrorism surveillance, welfare fraud investigations, or even public benefits verification. In each domain, difference becomes a variable in the state's probabilistic model of risk. Empirically, this pattern mirrors what scholars of criminal justice describe as the feedback loop of suspicion: the more a community is policed, the more evidence accumulates to justify further policing.[61] *Noem* hardwires that loop into doctrine by constitutionalizing demographic probability. This dynamic

59. See Michelle M. Mello, *Whose Common Sense? Some Reflections on Noem v. Vázquez Perdomo*, Stan. L. Sch. Legal Aggregate (Sept. 24, 2025).

60. *Id.*

61. See Michelle M. Mello, *Whose Common Sense? Some Reflections on Noem v. Vázquez Perdomo*, Stan. L. Sch. Legal Aggregate (Sept. 24, 2025); Rory Little, *"Roving Patrols," Reasonable Suspicion, and Perdomo*, SCOTUSblog (Sept. 18, 2025).

mirrors earlier stop-and-frisk regimes that disproportionately burdened racial and ethnic minorities. In *Floyd v. City of New York*, for example, a federal court documented how reliance on generalized profiles resulted in widespread unconstitutional stops.[62] *Noem* risks entrenching similar disparities under the guise of neutral, probability-based enforcement.

C. Chilling Effects on Communities

The normalization of demographic suspicion has predictable chilling effects on mixed-status communities. When identity markers trigger investigative stops, individuals may avoid public spaces, decline to report crimes, or disengage from civic life. These effects undermine both constitutional values and public safety.

D. Equal Protection Concerns

Although framed in neutral terms, probabilistic suspicion disproportionately burdens racial and ethnic minorities. Treating demographic traits as proxies for illegality risks reproducing the effects of profiling while avoiding explicit scrutiny. *Noem* sidesteps this concern by treating demographic inference as reasonable, even when its consequences are foreseeably unequal.

E. Efficiency and Constitutional Risk

At the broader level, *Noem* reflects an efficiency driven approach to constitutional interpretation. Risk management and administrative convenience begin to outweigh individualized rights. This risk management paradigm recasts constitutional protections as obstacles to be managed rather than guarantees to be preserved. Over time, such priorities erode public trust and weaken judicial oversight.

F. Restoring the Balance: Toward Doctrinal and Policy Recalibration

Restoring constitutional balance requires reaffirming individualized suspicion as the Fourth Amendment baseline. Courts must resist the temptation to substitute probability for

62. Floyd v. City of New York, 959 F. Supp. 2d 540, 558–59 (S.D.N.Y. 2013).

particularity, and policymakers should impose clear limits on the use of demographic inference in enforcement decisions.

Absent such recalibration, the transformation inaugurated by *Noem* risks entrenching a regime of status-based policing inconsistent with the Fourth Amendment's core commitments. The consequences of this shift are not confined to immigration law; they threaten to redefine constitutional reasonableness across contexts wherever risk and efficiency are invoked.

IV. CONCLUSION: CONSTITUTIONAL DRIFT IN THE SHADOWS

The evolution of the stop-and-frisk doctrine from *Terry v. Ohio* to *Noem v. Perdomo* reflects a profound shift in the constitutional regulation of police power. What began as a narrow accommodation designed to protect officer safety while preserving individual liberty has expanded into a framework that tolerates suspicion based on probability, inference, and perceived status rather than individualized conduct.

Noem exemplifies this transformation. Issued on the Supreme Court's shadow docket and devoid of full briefing or reasoned explanation, the decision authorizes immigration enforcement practices that rely on demographic and contextual indicators rather than particularized behavior.[63] In doing so, it redefines reasonable suspicion as a predictive inquiry and untethers the Fourth Amendment from its historical commitment to individualized justification.

Noem represents a form of constitutional drift, the gradual reworking of constitutional meaning through procedural shortcuts and unexamined assumptions. The shadow docket enables doctrinal change without the transparency, deliberation, or accountability traditionally associated with Supreme Court adjudication. Temporary emergency orders thus exert lasting influence on constitutional law while evading meaningful scrutiny.[64]

The consequences of this drift are not abstract. When suspicion is untethered from individual conduct, entire communities become subject to heightened surveillance and

63. Noem v. Perdomo, 146 U.S. (2025).

64. *See* Avi Siegal, *Balancing in the Shadows of Noem v. Vásquez Perdomo*, Yale J. on Regul.: Notice & Comment (Sept. 24, 2025).

intrusion. The normalization of demographic suspicion undermines the Fourth Amendment's promise that individuals will be secure against unreasonable seizures regardless of identity or status.[65] As Justice Sotomayor has warned across multiple Fourth Amendment dissents, constitutional liberties cannot be displaced simply because individualized enforcement is more burdensome or administratively inconvenient.[66]

Restoring constitutional balance requires a renewed commitment to both procedural and substantive restraint. Procedurally, courts should provide reasoned explanations when emergency orders implicate fundamental rights, particularly where those orders alter settled doctrine. Substantively, courts must reaffirm individualized suspicion as the constitutional baseline, resisting the substitution of probability for proof.

Absent such reforms, the trajectory inaugurated by *Noem* risks entrenching a regime of status-based policing that erodes public trust and diminishes the judiciary's role as a meaningful check on executive power. The enduring lesson *Terry* is that liberty demands justification.[67] Conversely, the lesson of *Noem*, if left unchecked, suggests that liberty may yield to prediction.[68] Whether the Fourth Amendment remains a shield for individuals or becomes a tool of risk management will depend on whether constitutional reasoning remains in the light or continues to drift in the shadows.

65. *See* United States v. Brignoni-Ponce, 422 U.S. 873, 885–87 (1975).

66. *See* Noem, 146 U.S. (2025) at 6 (Sotomayor, J., dissenting); Utah v. Strieff, 579 U.S. 232, 255–56 (2016) (Sotomayor, J., dissenting).

67. Terry v. Ohio, 392 U.S. 1 (1968).

68. Noem v. Perdomo, 146 U.S. (2025).