SUPREME COURT OF THE UNITED STATES

No. 03–5554

LARRY D. HIIBEL, PETITIONER *v.* SIXTH JUDICIAL DISTRICT COURT OF NEVADA, HUMBOLDT COUNTY, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

[June 21, 2004]

JUSTICE BREYER, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, dissenting.

Notwithstanding the vagrancy statutes to which the majority refers, see *ante,* at 4–5, this Court's Fourth Amendment precedents make clear that police may conduct a *Terry* stop only within circumscribed limits. And one of those limits invalidates laws that compel responses to police questioning.

In *Terry* v. *Ohio,* 392 U. S. 1 (1968), the Court considered whether police, in the absence of probable cause, can stop, question, or frisk an individual at all. The Court recognized that the Fourth Amendment protects the "'right of every individual to the possession and control of his own person.'" *Id.,* at 9 (quoting *Union Pacific R. Co.* v. *Botsford,* 141 U. S. 250, 251 (1891)). At the same time, it recognized that in certain circumstances, public safety might require a limited "seizure," or stop, of an individual against his will. The Court consequently set forth conditions circumscribing when and how the police might conduct a *Terry* stop. They include what has become known as the "reasonable suspicion" standard. 392 U. S., at 20–22. Justice White, in a separate concurring opinion, set forth further conditions. Justice White wrote: "Of course, the person stopped is not obliged to answer, answers may

not be compelled, and refusal to answer furnishes no basis for an arrest, although it may alert the officer to the need for continued observation." *Id.,* at 34.

About 10 years later, the Court, in *Brown* v. *Texas,* 443 U. S. 47 (1979), held that police lacked "any reasonable suspicion" to detain the particular petitioner and require him to identify himself. *Id.,* at 53. The Court noted that the trial judge had asked the following: "I'm sure [officers conducting a *Terry* stop] should ask everything they possibly could find out. *What I'm asking is what's the State's interest in putting a man in jail because he doesn't want to answer . . . .*" *Id.,* at 54 (Appendix to opinion of the Court) (emphasis in original). The Court referred to Justice White's *Terry* concurrence. 443 U. S., at 53, n. 3. And it said that it "need not decide" the matter. *Ibid.*

Then, five years later, the Court wrote that an "officer may ask the *[Terry]* detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. *But the detainee is not obliged to respond.*" *Berkemer* v. *McCarty,* 468 U. S. 420, 439 (1984) (emphasis added). See also *Kolender* v. *Lawson,* 461 U. S. 352, 365 (1983) (Brennan, J., concurring) (*Terry* suspect "must be free to . . . decline to answer the questions put to him"); *Illinois* v. *Wardlow,* 528 U. S. 119, 125 (2000) (stating that allowing officers to stop and question a fleeing person "is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning").

This lengthy history—of concurring opinions, of references, and of clear explicit statements—means that the Court's statement in *Berkemer*, while technically dicta, is the kind of strong dicta that the legal community typically takes as a statement of the law. And that law has remained undisturbed for more than 20 years.

There is no good reason now to reject this generation-old

statement of the law. There are sound reasons rooted in Fifth Amendment considerations for adhering to this Fourth Amendment legal condition circumscribing police authority to stop an individual against his will. See *ante,* at 1–6 (STEVENS, J., dissenting). Administrative considerations also militate against change. Can a State, in addition to requiring a stopped individual to answer "What's your name?" also require an answer to "What's your license number?" or "Where do you live?" Can a police officer, who must know how to make a *Terry* stop, keep track of the constitutional answers? After all, answers to any of these questions may, or may not, incriminate, depending upon the circumstances.

Indeed, as the majority points out, a name itself—even if it is not "Killer Bill" or "Rough 'em up Harry"—will sometimes provide the police with "a link in the chain of evidence needed to convict the individual of a separate offense." *Ante,* at 12–13. The majority reserves judgment about whether compulsion is permissible in such instances. *Ante,* at 13. How then is a police officer in the midst of a *Terry* stop to distinguish between the majority's ordinary case and this special case where the majority reserves judgment?

The majority presents no evidence that the rule enunciated by Justice White and then by the *Berkemer* Court, which for nearly a generation has set forth a settled *Terry*-stop condition, has significantly interfered with law enforcement. Nor has the majority presented any other convincing justification for change. I would not begin to erode a clear rule with special exceptions.

I consequently dissent.