

24-6597 No. 24-1343 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN MATTHEW BOAS,

Petitioner,

FILED

FEB 10 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

JASON GRAVES, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether probable cause exists during a stay at home order, when an officer sees someone exiting a grocery store and instead of walking directly home he video records police activity?
2. Whether an Emergency Powers Enforcement Doctrine should be created to protect Fourth Amendment Rights during emergency orders?

LIST OF PARTIES

TIMOTHY K. CAMERON, in his official capacity as the Executive, St. Mary's County Sheriff Office; STATE OF MARYLAND; LEONARDTOWN; BOARD OF COUNTY COMMISSIONERS FOR SAINT MARY'S COUNTY, MARYLAND; JOHN DOES 1-4

RELATED CASES

Boas v. Graves, No. 8:22-cv-00979-TJS (D. Md. Mar. 19, 2024)
Boas v. Graves, No. 24-1343 (4th Cir. Oct. 15, 2024)

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	2
LIST OF PARTIES.....	2
RELATED CASES.....	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
OPINIONS BELOW	5
JURISDICTION.....	5
RELEVANT CONSTITUTIONAL PROVISION.....	5
RELEVANT STATUTORY PROVISION.....	5
STATEMENT.....	6
REASONS FOR GRANTING THE WRIT	8
1. Officers Did Not Have Probable Cause To Arrest Petitioner Practicing His First Amendment Protected Speech	9
2. The Questions Presented Are Extremely Important	11
3. This Case Is An Ideal Vehicle For Resolving These Important Questions....	13
4. The Court Should Create An Emergency Powers Enforcement Doctrine.....	14
CONCLUSION	16
PROOF OF SERVICE.....	17
INDEX TO APPENDICES	

APPENDIX A, Opinion of the Fourth Circuit Court..... 1a

APPENDIX B, Opinion of the District Court..... 3a

APPENDIX C, Order denying Rehearing En Banc..... 27a

TABLE OF AUTHORITIES

CASES	PAGE NUMBER
<i>Beck v. Ohio</i> _____	12, 13
<i>Brown v. Texas</i> _____	9
<i>Butler v. City of New York</i> _____	15
<i>City of Chicago v. Morales</i> _____	9
<i>Florida v. Royer</i> _____	10
<i>Henry v. U.S.</i> _____	10, 12
<i>Rios v. United States</i> _____	12
<i>Terry v. Ohio</i> _____	6, 9, 12, 13
<i>Union Pac. R. Co. v. Botsford</i> _____	6
<i>Ybarra v. Illinois</i> _____	9

OPINIONS BELOW

The March 19, 2024 opinion and order of the United States District Court for the District of Maryland are unpublished. The October 15, 2024 order of the Fourth Circuit Court of Appeals is unpublished. All of these opinions and orders are reproduced in the appendix to this petition.

JURISDICTION

The order denying a timely rehearing en banc was denied on November 13, 2024. This petition is being submitted within the time permitted by the Rules of this Court. This court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

RELEVANT STATUTORY PROVISION

The MD Public Safety Code Ann. Section 14-3A-08 (2020) provides:

(a)(1) Except as provided in subsection (b) of this section, a person may not knowingly and willfully fail to comply with an order, requirement, or directive issued under this subtitle.

(2)A person who violates paragraph (1) of this subsection is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$5,000 or both.

STATEMENT

This Court held in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (quoting *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251, 11 S.Ct. 1000, 35 L.Ed. 734 (1891) “No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” Meanwhile, many suits came in many lower courts of many states arguing the constitutionality of the emergency mandates and orders during the COVID-19 lock downs on the grounds of Fourth Amendment Rights. This case does not argue the constitutionality or applicability of the mandates and orders but rather the enforcement. The lack of proper leadership in many departments across the country created a practice of unnecessarily and illegally violating Fourth Amendment Rights. Officers were using the lock down mandates and orders as a pretextual reason to stop and search individuals, without clear and unquestionable authority of law.

On March 30, 2020, former Sheriff Cameron of the St. Mary's County Sheriff's Office wrote and signed Memorandum No. 20-2962, Addendum #6, where he directed

officers that "According to the Maryland Office of Attorney General, any pedestrian or vehicular traffic whose exemption from the SHO is not "readily apparent" could constitute probable cause of a violation of the order." This resulted in vehicles being pulled over randomly and the issue of the instant case.

On April 22, 2020, Petitioner Steven Matthew Boas went to the grocery store to buy groceries. On the way into the store he witnessed what he believed to be discrimination against a Black man on a bicycle. Officer Graves had stopped the man and told him that there was a Stay-at-Home Order (SHO) and he could not ride his bicycle here. Petitioner filmed the interaction, then told the officer that the SHO allowed people to ride bicycles and that he was disappointed in the officer. App. 5a.

When petitioner exited the store with a bag of groceries on his shoulder he began to walk back and forth on the sidewalk filming the continued police presence. Soon after he exited, Officers Jason Graves and William Rishel approached petitioner and demanded identification. App. 5a-6a. Petitioner tried to walk away. Officers questioned if petitioner was done shopping. Petitioner responded that "[he] do[es]n't have to tell the officer what [he's] doing." Officer Graves told petitioner that he would be arrested if he fails to leave. But then gave no time for petitioner to leave and immediately arrested and searched him. App. 6a. In conversation to justify his arrest Officer Graves pointed out

Petitioner questions the constitutionality of the enforcement during stay-at-home orders across the nation which contradicted core Fourth Amendment principle. In *Terry v. Ohio*, 392 U.S. 1 (1968) and *Brown v. Texas*, 443 U.S. 47 (1979), the Supreme Court underscored the need for specific and articulable facts to justify a stop or arrest. *Ybarra v. Illinois*, 444 U.S. 85 (1979), probable cause must be specific to the individual and cannot be presumed based on their mere presence in a particular area.

1. Officers Did Not Have Probable Cause to Arrest Petitioner Practicing His First Amendment-Protected Rights

The Fourth Circuit's decision in this case erroneously expands the scope of police authority under the stay-at-home order, creating a precedent that unduly infringes on civil liberties. In *City of Chicago v. Morales*, 527 U.S. 41 (1999), the Supreme Court underscored the importance of clear legal standards that do not grant excessive discretion to law enforcement officers, particularly when such discretion can lead to constitutional violations. The decision below, however, grants officers excessive leeway to arrest individuals based on vague, unsupported inferences, contrary to well-established principles of probable cause.

The arrest in this case was based on an incorrect interpretation of the stay-at-home order. The Maryland Attorney General and Sheriff claimed that any individual seen outside their home must provide a “readily apparent” reason for being out or risk arrest.

This broad standard contradicts the explicit exemptions in the order, which permit individuals to leave their homes for essential activities, including going to the grocery store. The Petitioner was lawfully outside for this reason, and there was no factual basis to conclude that his presence outside violated the order. "The general rule [is] that seizures of the person require probable cause to arrest." *Florida v. Royer*, 460 U.S. 491, 499, 103 S. Ct. 1319, 75 L. Ed. 2D 229 (1983). "[G]ood faith on the part of the arresting officers is not enough. Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed." *Henry v. U.S.*, 361 U.S. 98, 102, 80 S. Ct. 168, 4 L. Ed. 2D 134 (1959)

Moreover, the arresting officer knew that the Petitioner was walking to and from the grocery store, an activity expressly permitted under the order. The officer also observed the Petitioner filming the police—a form of First Amendment-protected expression in the Fourth Circuit. The act of filming police officers in a public space is constitutionally protected in the Fourth Circuit, and this protected activity cannot, by itself, constitute probable cause for arrest. The officer's awareness of these facts should have precluded any reasonable belief that the Petitioner was violating the stay-at-home order.

By allowing the officer's actions to be upheld, the Fourth Circuit's decision invites arbitrary enforcement of emergency orders. Under this reasoning, any individual briefly pausing during a lawful walk—such as sitting on a bench for a few moments—

could be subject to arrest, even in the absence of any violation of the order. This creates an unreasonably broad standard for probable cause, stripping individuals of their right to engage in ordinary activities, including the exercise of their First Amendment rights, without fear of arrest.

2. The Question Presented is Extremely Important

The issues raised in this petition concern the fundamental limits of governmental authority during emergencies, a question of profound constitutional significance. The likelihood of future emergencies makes this issue particularly pressing.

Another pandemic is not merely hypothetical; it is statistically probable. A study by M. Marani et al. (Intensity and frequency of extreme novel epidemics, Proc. Natl. Acad. Sci. U.S.A.118 (35) e2105482118, [https://doi.org/10.1073/pnas.2105482118\(2021\)](https://doi.org/10.1073/pnas.2105482118(2021))) has estimated that there is a 2% chance per year of a pandemic occurring. Given this probability, the legal questions surrounding pandemic-related restrictions and enforcement measures must be resolved to prevent future misapplications of emergency authority. Without clear judicial guidance, the risk of constitutional overreach remains substantial.

Another Stay-at-Home Order (SHO) or similar emergency directive is likely. As seen during the COVID-19 pandemic, state and local governments implemented broad orders restricting movement, often enforced by law enforcement officers interpreting

their authority inconsistently. Without judicial clarification, future emergency orders may again be enforced in ways that infringe upon constitutional rights.

Law Enforcement Departments across the country misinterpreted police authority during the COVID-19 lock down. Their policies and practices showed an inconsistency of following the Fourth Amendment constitutional rights. Officers in Southern Texas were stopping vehicles indiscriminately under mere hunches that they may be outside of their home without a valid exemption.

(<https://www.texastribune.org/2020/12/19/coronavirus-south-texas-enforcement/>) In addition, the Maryland Attorney General, former St. Mary's County Sheriff Timothy Cameron, and Officers Graves and Rishel all misinterpreted the scope of law enforcement authority under the SHO. They incorrectly concluded that a person who was outside their home without a "readily apparent" exemption could be arrested, despite the absence of statutory authority supporting such enforcement. This misinterpretation led to unconstitutional policing and unlawful arrests.

They "invite(d) intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction." See, e.g., *Beck v. Ohio*, *supra*; *Rios v. United States*, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960); *Henry v. United States*, 361 U.S. 98, 80 S.Ct. 168, 4 L.Ed.2d 134 (1959). *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2D 889 (1968) "And simple "good faith on the part of the arresting officer is not

enough.' * * * If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers and effects,' only in the discretion of the police.'" *Beck v. Ohio*, *supra*, at 97, 85 S.Ct. At 229. *Terry v. Ohio*, 392 U.S. 1, 22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2D 889 (1968).

3. This Case is an Ideal Vehicle for this Court to Resolve the Questions

Presented

This case is the ideal vehicle for the Court to clarify limits on police enforcement of emergency orders. While emergency mandates may be necessary, their enforcement must not lead to arbitrary or retaliatory policing. The COVID-19 stay-at-home orders marked the first time such measures were broadly enforced, exposing the need for clear legal limits before the next crisis.

The arrest resulted from misguided leadership and unchecked police discretion. Officers applied emergency directives arbitrarily, highlighting the dangers of vague enforcement authority. This Court should define the limits of such discretion to prevent future abuses.

No factual disputes impede review. The arrest and search are undisputed, and the only issue is whether probable cause existed. The absence of contested facts allows the Court to resolve the legal question cleanly.

This was the first nationwide enforcement of stay-at-home orders, and the timing

is critical. Establishing legal limits now will prevent future uncertainty. A case like this is unlikely to return, as most police misconduct claims settle, lack funding for appeal, or are dismissed under qualified immunity. If left unresolved, the unchecked enforcement of emergency mandates will continue.

4. The Court should create an Emergency Powers Enforcement Doctrine

The COVID-19 pandemic and subsequent lock downs created significant disorder and confusion across the nation. Enforcement of emergency health orders, in particular, lacked uniformity and clear leadership in many areas. While some individuals complied with health mandates, others protested, asserting that their constitutional rights were being violated. The lack of consistency in enforcement and the resulting public dissent underscore the need for a coherent, nationwide framework to govern emergency powers.

The real issue lies in the delicate judicial balancing act between protecting public health through emergency measures and safeguarding constitutional rights. The enforcement of emergency orders affects every citizen, and the disparate responses across states further complicate this balance. Each state has its own laws, emergency powers, and criteria for enforcement, leading to confusion and disparate treatment of individuals.

In light of these challenges, the Court should establish a clear Emergency Powers Enforcement Doctrine. This doctrine should be rooted in the framework provided by the

Maryland Public Safety Code statute (MD Public Safety Code Ann. Section 14-3A-08 (2020)) and the enforcement practices of the NYPD in *Butler v. City of New York*, 559 F. Supp. 3d 253 (S.D.N.Y. 2021), both of which provide reasonable, clear standards for police conduct in emergency situations. The Maryland statute, which requires that individuals are only in violation of an order when they "knowingly and willfully" disregard it, creates a crucial hurdle that law enforcement must meet before taking enforcement action. This ensures that individuals are not penalized for mere technical violations, but for intentional acts that disregard public health measures.

The NYPD's approach to clearing large gatherings in Central Park during the pandemic is a prime example of effective enforcement aligned with these principles. In *Butler v. City of New York*, NYPD officers followed a clear, structured process: first, they identified a violation of the public health order, then they informed individuals of the violation, and finally, they gave time for compliance before taking further action. This methodical approach not only ensured adherence to public health measures but also protected the constitutional rights of individuals, fulfilling the "knowingly and willfully" standard.

Simply being out of one's house or engaging in routine activities should not automatically trigger an enforcement action. Arrests or escalated police encounters should not occur unless there is clear evidence that an individual is knowingly and willfully violating an emergency order. Officers should be required to meet these

thresholds before taking enforcement action, ensuring that constitutional rights are upheld even in times of crisis.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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