No. 24-883

IN THE

Supreme Court of the United States

MOLLY VOGT, AS TRUSTEE FOR THE HEIRS AND NEXT OF KIN OF JOSHUA VOGT, DECEASED,

Petitioner,

v.

CO ROBERT ANDERSON, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE LAW ENFORCEMENT ACTION PARTNERSHIP AS AMICUS CURIAE IN SUPPORT OF PETITIONER

JONATHAN C. BOND
Counsel of Record
LAVI M. BEN DOR
JOHN N. REED
TRISTAN LOCKE
AUDREY PAYNE
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
JBond@gibsondunn.com

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE*

The Law Enforcement Action Partnership (LEAP) is a nonprofit organization whose members include police, prosecutors, judges, corrections officials, and other law-enforcement officials advocating for criminal-justice and drug-policy reforms that will make our communities safer and more just. Founded by five police officers in 2002 with a sole focus on drug policy, today LEAP's speakers bureau numbers more than 300 criminal-justice professionals advising on police-community relations, incarceration, harm reduction, drug policy, and global issues. Through speaking engagements, media appearances, testimony, and support of allied efforts, LEAP reaches audiences across a wide spectrum of affiliations and beliefs, calling for more practical and ethical policies from a public-safety perspective.

This case presents an important opportunity to ensure that law-enforcement officers are deterred from destroying evidence of their misconduct and are kept accountable for violating citizens' constitutional rights. That accountability is essential to maintaining the integrity of law enforcement, building trust in police, and ultimately keeping the public safe. LEAP and its members thus have an interest in ensuring that remedies are available to victims of law-enforcement misconduct and that legal rules creating perverse incentives for law enforcement are overturned.

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* Pursuant to this Court's Rule 37.2, because this brief is filed earlier than 10 days prior to the due date, the brief itself suffices as notice to the parties. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than amicus or its counsel made a monetary contribution to this brief 's preparation.

INTRODUCTION AND SUMMARY OF ARGUMENT

Joshua Vogt died of a drug overdose while in police custody. When his daughter sued, correctional officers watched—and then intentionally destroyed—the only video footage showing his critical final moments. The district court found the deliberate destruction of that crucial evidence sufficient to award an adverse-inference instruction permitting—but not requiring—a jury to infer that the destroyed video would have been harmful to the case of respondents, three officers who were responsible for caring for Mr. Vogt that night.

But a jury never had that chance. The Eighth Circuit held that summary judgment was warranted for respondents despite the adverse inference a jury would have been able to draw at trial because, in the court's view, the evidence that jail officials opted to preserve did not contradict respondents' own self-serving testimony. Pet. App. 7a-9a. That approach—which conflicts with those of several other courts of appeals, Pet. 11-21—leaves the adverse-inference instruction here a dead letter. It prevents the instruction from serving its critical role in protecting the jury's factfinding function and remedying the harms caused by the officials' misconduct. The Eighth Circuit's approach also enables officers who violate civil liberties to evade any attempt to hold them accountable by destroying evidence of their misconduct and using the absence of that evidence to prevail at summary judgment.

The decision below jeopardizes the important role of adverse-inference instructions in our legal system. Such an instruction ensures that bad-faith spoliation does not short-circuit the jury's critical factfinding role, and it restores the party prejudiced by destruction of evidence to the position it would otherwise

have enjoyed. The threat of such instructions also deters potential spoliators and in turn can reduce the likelihood that misconduct will occur in the first place. Judges appreciate the potency of these instructions and accordingly issue them only in truly serious cases of discovery misconduct, like what happened here. An adverse-inference instruction in those circumstances is thus not a windfall for victims of spoliation but instead a critical and proportional response that protects the integrity of the judiciary against litigants' worst instincts.

The likely effects of the Eighth Circuit's treatment of adverse inferences at the summary-judgment stage are not difficult to predict. Under its approach, an adverse-inference instruction does not meaningfully change the calculus at summary judgment whenever corrupt officers have presented their own countervailing narrative of events based on the record that they distorted. As a result, the Eighth Circuit's approach weakens a critical check on such officers who may face strong incentives to destroy evidence when they have engaged in misconduct. The decision below thus leaves defendants with greater ability and more motivation to destroy evidence with impunity.

That result imperils public trust in law enforcement, threatening the ability of officers—the overwhelming majority of whom are law-abiding and decent—to keep themselves and our communities safe. Public trust in law enforcement is vital for officers to do their jobs safely and effectively in a variety of contexts. Prisoners are more likely to comply with correctional officers' instructions (and officers are more likely to be safe) if prisoners perceive officers as fair. And the public is more likely to assist law-enforcement efforts and report crimes if they trust the

police to act with integrity. Shielding bad apples from consequences for destroying evidence of their own misconduct will undermine that trust—making it more difficult for honest law-enforcement officers to do their jobs.

This Court should grant the petition.

ARGUMENT

I. ADVERSE-INFERENCE INSTRUCTIONS SERVE AS CRUCIAL REMEDIES FOR AND DETERRENTS AGAINST DESTRUCTION OF EVIDENCE

Adverse-inference instructions are important tools to maintain the proper administration of the judicial process. These instructions serve two principal purposes: They maintain fairness in legal proceedings by curing the harm suffered after a party destroys relevant evidence, and they deter future spoliation by ensuring that litigants who act in bad faith will be held accountable. Although an adverse inference can "pac[k] a wallop," *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1, 36 (2024), that is by design; such instructions are a proportionate response to truly serious discovery misconduct and are essential safeguards helping to ensure the fair administration of justice.

A. Federal courts have ample power to ensure that parties adequately preserve evidence—and to impose consequences for parties' failure to do so. Courts have long enjoyed the inherent authority "to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 44-45 (1991); accord 2 John Henry Wigmore, *Evidence in Trials at Common Law* § 291, at 227-229 (Chadbourn rev. 1979) (Wigmore). That inherent authority "include[s] broad discretion to craft proper sanctions

for spoliated evidence." *Adkins* v. *Wolever*, 554 F.3d 650, 651 (6th Cir. 2009) (en banc); see, *e.g.*, *Silvestri* v. *General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001); *West* v. *Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999). Potential sanctions can include, for example, the reopening of discovery, a prohibition on presenting certain evidence or testimony, monetary penalties, or (in the most severe cases) even judgment for the injured party. See Emery G. Lee III, Federal Judicial Center, *Motions for Sanctions Based Upon Spoliation of Evidence in Civil Cases: Report to the Judicial Conference Advisory Committee on Civil Rules* 8-9 (2011) (Lee), https://perma.cc/5LKU-H4D6.

One particularly important and powerful sanction is an adverse-inference instruction, which either permits or requires the jury to infer that the spoliated evidence would have been unfavorable to the party that failed to produce it. 2 Wigmore 227-229. That potent sanction is warranted only when evidence has been destroyed with a "culpable state of mind." *Beaven* v. *United States Department of Justice*, 622 F.3d 540, 553 (6th Cir. 2010) (citation omitted). That typically requires a showing of "bad faith"—an "intentional destruction" of evidence "indicating a desire to suppress the truth." *Stevenson* v. *Union Pacific Railroad Co.*, 354 F.3d 739, 746 (8th Cir. 2004); accord, *e.g.*, *GN Netcom, Inc.* v. *Plantronics, Inc.*, 930 F.3d 76, 83 (3d Cir. 2019) (adverse inference appropriate when evidence withheld in "bad faith," *i.e.*, with "'inten[t] to impair the ability' of a litigant to put on a case or defend itself" (citation omitted)); *Aramburu* v. *Boeing Co.*, 112 F.3d 1398, 1407 (10th Cir. 1997) (similar; collecting cases); but see *Hoffer* v. *Tellone*, __ F.4th __, 2025 WL 479041, at *1, *4-*5 (2d Cir. Feb. 13, 2025) (negligence can constitute "'culpable state of mind'" required for adverse-inference sanction under court's inherent authority).

Recognizing the importance of addressing spoliation in the digital age—when important files can be permanently deleted with the click of a button—the Rules Committee in 2015 amended Federal Rule of Civil Procedure 37 to codify expressly district courts' authority to sanction spoliation in the context of electronically stored information (ESI). When a litigant has been "prejudice[d]" by the loss of ESI "because a party failed to take reasonable steps to preserve it," Rule 37(e) authorizes a court to order sanctions "no greater than necessary to cure the prejudice." The Rule permits the court to impose the most severe sanctions—adverse-inference instructions, dismissals, and default judgments—only if the court finds that the spoliating party acted "with the intent to deprive another party of the information's use in the litigation." Fed. R. Civ. P. 37(e)(2). If it makes that finding, the court can "presume that the lost information was unfavorable to the party" or "instruct the jury that it may or must" draw that inference. *Ibid.*

B. Adverse-inference instructions are essential to ensuring the integrity of the judicial process. Like other powerful sanctions that may be imposed only in cases of egregious misconduct, adverse inferences serve both "to penalize those whose conduct may be deemed to warrant such a sanction" and "to deter those who might be tempted to such conduct in the absence of such a deterrent." *National Hockey League* v. *Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) (per curiam).

First, adverse-inference instructions cure the prejudice suffered by the victim of spoliation and the justice system. Spoliation deprives the victim of evidence that would potentially help her case—thus skewing the evidentiary landscape in the spoliator's favor. See *Kronisch* v. *United States*, 150 F.3d 112,

126 (2d Cir. 1998) ("[A] party's destruction of evidence * * * suggests that the evidence was harmful to the party responsible for its destruction."). And it simultaneously disables the trier of fact—the jury—from performing its truth-seeking function, by concealing potentially important evidence.

Adverse-inference instructions address both harms. They "restor[e] the prejudiced party" to her original "position" by either enabling or requiring the jury to fill in evidentiary gaps by inferring facts. *Kronisch*, 150 F.3d at 126. That "level[s] the evidentiary playing field," *Silvestri*, 271 F.3d at 590 (citation omitted), and "plac[es] the risk of an erroneous judgment on the party that wrongfully created the risk," *Nation-Wide Check Corp.* v. *Forest Hills Distributors, Inc.*, 692 F.2d 214, 218 (1st Cir. 1982) (Breyer, J.). And such instructions revive the jury's ability to find facts free of the artificial impediment interposed by destruction of evidence. Adverse-inference instructions are therefore no "windfall." *Flagg* v. *City of Detroit*, 715 F.3d 165, 178 (6th Cir. 2013). They merely undo the damage caused by destruction of evidence and remove an obstacle to the jury's proper fulfillment of its function.

Second, beyond redressing the harms caused by spoliation in a specific case, an adverse-inference instruction also deters spoliation in future cases. It is a "commonsensical proposition that the drawing of an adverse inference against parties who destroy evidence will deter such destruction" going forward. *Kronisch*, 150 F.3d at 126; accord *Nation-Wide*, 692 F.2d at 218 (similar); *Zubulake* v. *UBS Warburg LLC*, 220 F.R.D. 212, 219 (S.D.N.Y. 2003) ("The *in terrorem* effect of an adverse inference is obvious."). When parties know

that destroying evidence will be met with correspondingly severe consequences, they will think twice before destroying evidence.

C. Recognizing the potency of adverse-inference instructions, courts award them judiciously. Courts have adopted meaningful safeguards—both doctrinally and as a matter of discretion—on the use of adverse inferences.

A party seeking an adverse-inference instruction must clear a high bar. The district court must find both bad faith (or some other, similarly culpable mental state) on the part of the wrongdoer and prejudice to another party from the loss of the evidence. *Hallmark Cards, Inc.* v. *Murley*, 703 F.3d 456, 461 (8th Cir. 2013); see Fed. R. Civ. P. 37(e)(1)-(2) (similar); *Panel Discussion—Sanctions in Electronic Discovery Cases: Views from the Judges*, 78 Fordham L. Rev. 1, 9-10 (2009) (*Views from the Judges*) (remarks of Hon. Shira A. Scheindlin) (noting importance of bad faith and prejudice for awarding the "powerful" adverse-inference instruction). Even when those prerequisites have been proved, courts exercising their discretion typically reserve adverse inferences for cases of especially serious spoliation where lesser sanctions are insufficient to deter future misconduct. See, *e.g.*, *Higgs* v. *Costa Crociere S.p.A.*, 969 F.3d 1295, 1301, 1307 (11th Cir. 2020) (upholding adverse-inference instruction sanction imposed for an "egregious discovery violation" (citation omitted)); see also *Views from the Judges* 18 (remarks of Hon. Elizabeth D. Laporte) (explaining that severe sanctions are reserved for "very egregious behavior"); *ibid.* (remarks of Hon. Loretta A. Preska) (observing that such instructions are ap-

propriate only if a lesser sanction would not be adequate to "penalize the defendant and counsel and to deter such conduct by others").

Data show that these checks are meaningful and that judges are careful to issue adverse-inference instructions only rarely in response to serious discovery violations. A 2011 study for the Judicial Conference examining civil cases in 19 districts found that parties brought sanctions motions in only 0.12% of cases, that the motions were granted only 28% of the time, and that adverse inferences were imposed in just 44% of cases where a sanction was imposed (0.01% of the total cases surveyed). Lee 1-4. Several other studies have reported similar findings. See Dan H. Willoughby, Jr. et al., *Sanctions for E-Discovery Violations: By the Numbers*, 60 Duke L.J. 789, 811 (2010) (finding 52 written opinions awarding adverse-inference instructions for e-discovery violations, out of all federal civil cases decided prior to 2010); Hon. Shira A. Scheindlin & Kanchana Wangkeo, *Electronic Discovery Sanctions in the Twenty-First Century*, 11 Mich. Telecomm. & Tech. L. Rev. 71, 73, 77 & n.30 (2004) (identifying only 45 written opinions adjudicating sanctions motions concerning alleged e-discovery spoliation in federal civil cases between 2000 and 2004, and seven adverse-inference instructions issued across those opinions).

The promulgation of Rule 37(e) has made judges even more focused in recent years on "tightly correlating the importance of the evidence and the degree of prejudice with the particular sanctions imposed." Sarah Himmelhoch & Neeli Ben-David, *Rule 26 Proportionality: Have the 2015 Amendments Brought Common Sense to the Preservation Obligation?*, 68 DOJ J. Fed. L. & Prac., no. 3, at 81, 94 (2020) (Himmelhoch); see also Graham Streich, *Court Mandated Technology-*

Assisted Review in E-Discovery: Changes in Proportionality, Cost-Shifting, and Spoliation, 90 Fordham L. Rev. Online 139, 144 (2022) (recognizing that Rule 37(e) "made it harder for requesting parties" to obtain sanctions for spoliation). That is in part because the Rule requires a finding of "intent to deprive another party of the information's use in the litigation," Fed. R. Civ. P. 37(e)(2)—a showing more demanding than some circuits had previously required, see Himmelhoch 90-91; *Hoffer*, 2025 WL 479041, at *4-*5. Unsurprisingly, according to one recent study, Rule 37(e)'s amendments have reduced the frequency with which judges impose severe spoliation sanctions. See *The End of Sanctions? The Dramatic Decline in Sanctions and the "De-Risking" of eDiscovery*, Logikcull (Mar. 21, 2019), https://perma.cc/AGQ4-MUDH. The study found that just 36% of spoliation sanctions motions were granted in 2018, a marked decline from the 63% of motions granted in 2014. *Ibid.* These data reflect the reality that courts take care to police the limits on serious sanctions such as adverse inferences.

Beyond the showing needed to obtain an adverse inference, some courts also require that a victim of spoliation produce additional evidence to survive a motion for summary judgment. See *Kronisch*, 150 F.3d at 128 ("[W]here the innocent party has produced some (not insubstantial) evidence in support of his claim, the intentional destruction of relevant evidence by the opposing party may push a claim that might not otherwise survive summary judgment over the line."); cf. *Epic Systems Corp.* v. *Tata Consultancy Services Ltd.*, 980 F.3d 1117, 1136 (7th Cir. 2020) ("[E]vidence supporting an adverse inference, combined with other relevant circumstantial evidence, may be a sufficient evidentiary basis for a jury's verdict," although "the destruction of evidence—by itself—is insufficient").

Irrespective of whether and to what extent such further limitations are warranted, they show that courts recognize the power of adverse-inference instructions and exercise caution when dealing with them.

* * *

A court's decision to issue an adverse-inference instruction reflects its considered judgment that fairness requires severe consequences for the spoliating party's deliberate failure to preserve evidence. The instruction empowers (or requires) the jury to remedy the evidentiary imbalance by inferring that the missing evidence would have weighed in the spoliation victim's favor. And it disincentivizes others from engaging in similar conduct that undermines the integrity of the judicial process.

II. THE EIGHTH CIRCUIT'S DECISION EFFECTIVELY NULLIFIES ADVERSE-INFERENCE INSTRUCTIONS

The Eighth Circuit's approach erodes the vital role of adverse-inference instructions in litigation. The district court determined that such an instruction was warranted here after the only video footage showing Mr. Vogt's critical last moments was "intentionally destroyed" by respondents' colleagues. Pet. App. 3a; see Pet. 6-7; Pet. App. 72a, 78a-81a. Based on jail officials' deliberate destruction of evidence, which the court determined was "properly imputed" to respondents under settled case law, Pet. App. 92a; see *id.* at 85a-92a, the court held that the high bar for a permissive adverse-inference instruction was met.

If properly respected, that instruction would have empowered *the jury* to decide whether and how far to draw the inference. Adverse-inference instructions reflect "the common sense notion" that a spoliator destroys only evidence that would harm his case in some

way. *Kronisch*, 150 F.3d at 126. But determining what that evidence would likely have shown is a complex question, and the precise answer may be unknowable. Our legal system entrusts such determinations to juries based on the nature of what the spoliated evidence could have shown and the totality of the other evidence at trial. Here, the latter would have included not only respondents' testimony and the evidence that survived the spoliation, but also the jury's assessments of respondents' credibility based on their body language, demeanor, and other clues that would be revealed only during cross-examination—"the greatest legal engine ever invented for the discovery of truth." *Kentucky* v. *Stincer*, 482 U.S. 730, 736 (1987) (citation and quotation marks omitted).

At the summary-judgment stage, the district court's obligation here was no different than usual—to "view the facts and draw reasonable inferences 'in the light most favorable to the party opposing the summary judgment motion.'" *Scott* v. *Harris*, 550 U.S. 372, 378 (2007) (brackets and citation omitted). The court was thus required to draw all reasonable inferences about what the spoliated footage could have shown in favor of petitioner (the nonmovant) and decide whether those inferences, together with the surviving evidence, sufficed for her to make it to trial. Here, that should have led the court to draw the all-too-reasonable inference that the spoliated footage could have contradicted respondents' testimony. The court should then have concluded that the combination of that inference and other record evidence favoring petitioner, see Pet. App. 11a-13a (Shepherd, J., dissenting), created a bona fide factual dispute about what occurred in Mr. Vogt's final moments, precluding summary judgment.

The district court, however, disregarded that obligation, and the Eighth Circuit's approach led the court of appeals to affirm that abdication. Like the district court, the majority ventured out to decide for itself what the spoliated evidence would or would not have shown and resolved respondents' summary-judgment motion based on whether that hypothetical evidence contradicted the record curated by jail officials—respondents' "testimony" and the "videos" that had not been destroyed. Pet. App. 3a, 8a-9a; see *id*. at 10a, 12a-13a (Shepherd, J., dissenting). But determining what facts the spoliated evidence would have shown is ultimately the job of the jury at trial. In resolving a summary-judgment motion, the courts' obligation was to preserve the jury's prerogative by assuming all reasonable inferences in petitioner's favor.

The Eighth Circuit's approach usurps that responsibility and leaves adverse-inference instructions with very little role to play at summary judgment. Indeed, the instruction loses any practical significance whenever a court disagrees with the inference based on its own assessment of the other evidence in the record. That misguided approach "invades the province of the jury" and "render[s]" adverse-inference instructions "a nullity." Pet. App. 12a-13a (Shepherd, J., dissenting).

III. THE EIGHTH CIRCUIT'S RULE WILL UNDERMINE PUBLIC TRUST IN LAW ENFORCEMENT AND THE SAFETY OF CORRECTIONAL FACILITIES

The consequences of the Eighth Circuit's approach are severe, particularly for cases like this one involving alleged wrongdoing by law enforcement. If an adverse-inference instruction does not alter a party's prospects of surviving summary judgment, officers facing civil lawsuits for misconduct have weak incentives to preserve damaging evidence. And bad

actors already have a strong and countervailing incentive to destroy damning evidence. As this Court has recognized, suits against government officials impose serious financial and time-related burdens on them. See, *e.g.*, *Anderson* v. *Creighton*, 483 U.S. 635, 638 (1987). And the Court has expressed concerns that officials will respond to those burdens by changing their conduct in ways that are inconsistent with their obligations to the community as law-enforcement officers. See *ibid.* (noting risk that lawsuits "will unduly inhibit officials in the discharge of their duties"); *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (1985) (noting risk that lawsuits will lead to "inhibition of discretionary action" (citation omitted)).

Weakening a key deterrent against spoliation will predictably and significantly undermine efforts "to hold public officials accountable" under civil-rights statutes like 42 U.S.C. § 1983 "when they exercise power irresponsibly." *Pearson* v. *Callahan*, 555 U.S. 223, 231 (2009); see *Harlow* v. *Fitzgerald*, 457 U.S. 800, 807 (1982) (acknowledging "the importance of a damages remedy to protect the rights of citizens"). If adverse-inference instructions do not provide a meaningful check on spoliation, relief becomes illusory, because officers can dodge liability by destroying evidence of their misconduct and then pointing to the lack of such evidence to defeat civil-rights suits at summary judgment. The Eighth Circuit's approach only portends more spoliation and more difficulty in holding responsible law-enforcement officers who "us[e] the badge of their authority to deprive individuals of their federally guaranteed rights." *Wyatt* v. *Cole*, 504 U.S. 158, 161 (1992).

Allowing officers to escape accountability will in turn threaten public safety. The criminal-justice system depends on community trust. Members of the public are more likely to obey the law and cooperate with law enforcement when they believe that officers are equally bound to follow the rules they enforce. Checks on officer misconduct like the adverse-inference instruction are essential to preserving that trust and enabling the vast majority of police and correctional officers who are honest and law-abiding to keep their communities safe.

The Eighth Circuit's approach makes it significantly harder to hold officers responsible when they engage in misconduct. It will accordingly strain the relationship between members of the public and law enforcement—in prisons and on the streets alike—and undermine good-faith corrections and policing efforts. These far-reaching effects on public safety illustrate why this Court's review is urgently needed here.

A. Diluting Sanctions For Intentional Spoliation By Law Enforcement Will Undermine Effective Functioning Of Correctional Systems

By sapping the force of a key remedy for spoliation by corrections departments like the one here, the Eighth Circuit's rule diminishes public confidence in the integrity of correctional systems. That in turn threatens to make correctional facilities less safe for inmates and guards alike.

Spoliation in prisons is already a serious problem. In just the past decade, for example, audits of federal contract prisons and of state prisons in New Jersey, Tennessee, and Georgia found that prison officials

frequently failed to obtain, or even prematurely destroyed, video surveillance. See Office of the Inspector General, U.S. Department of Justice, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons* 28 (2016), https://perma.cc/DB4P-35P5; Investigations Division, N.J. Office of the State Comptroller, *Department of Corrections' Internal Affairs Unit Failed to Adequately Investigate Abuse Allegations* 18-20 (2024) (New Jersey Audit), https://perma.cc/KNL9-3SQL; Tenn. Comptroller of the Treasury, *Performance Audit Report, Department of Correction* 195-197 (2020) (Tennessee Audit), https://perma.cc/G57C-8SZC; Civil Rights Division, U.S. Department of Justice, *Investigation of Georgia Prisons* 62, 73, 83 (2024), https://perma.cc/34XP-Z5N6. Spoliation at those institutions has made it more difficult to "hold government officials accountable for their actions" and "assure the public, legislators, and other stakeholders about management decisions." Tennessee Audit x, 197. And it has "undermine[d] oversight [of correctional facilities] and raise[d] doubts in the minds of the public that investigations into alleged police misconduct were conducted with integrity." New Jersey Audit 19.

If left unchecked, spoliation problems in correctional facilities, and the accompanying decay in public trust, may only grow worse. Without the remedial powers of adverse-inference instructions, more abusive correctional officers will likely avoid justice. And without the deterrent effect of those instructions, more correctional officers will likely destroy evidence that could prove that they engaged in misconduct. Although inmates without legal training may not uniformly appreciate the technical niceties of Rule 56 and adverse-inference instructions, they see and hear about the ultimate results of civil-rights litigation against bad apples in their facilities. As a result, if

spoliation threatens the justice system, inmates will know—increasing toxic perceptions that the correctional system is unfair and harming inmates' trust in that system.

That loss of public trust will threaten good-faith corrections efforts. If inmates do not believe that officers are acting with integrity, that will make jails and prisons less safe for both inmates and officials. Research has consistently shown that inmates are most likely to cooperate with and comply with orders from correctional officers when they have faith that the officers are administering evenhanded, just treatment. See, *e.g.*, Thomas Baker et al., *Exploring the Association Between Procedural Justice in Jails and Incarcerated People's Commitment to Institutional Rules*, 6 Corrections: Policy, Prac. & Rsch. 189, 189 (2019) ("[P]rocedural justice is the strongest predictor of self-regulation in jails."); Benjamin Steiner & John Wooldredge, *Examining the Sources of Correctional Officer Legitimacy*, 105 J. Crim. L. & Criminology 679, 698-700 (2015) (suggesting that "treating inmates more fairly and with dignity during routine interactions might go a long way towards making prisons safer and more orderly, not to mention more morally just"). But when inmates perceive prison staff to be treating inmates unfairly, willfully concealing misconduct, or acting as though they are unconstrained by law or procedure, the inmates are more likely to disobey orders and prison regulations. See Cathal Ryan & Michael Bergin, *Procedural Justice and Legitimacy in Prisons: A Review of Extant Empirical Literature*, 49 Crim. Just. & Behavior 143, 143 (2021).

Reduced compliance and cooperation, in turn, will likely result in greater security threats to correctional officers and other inmates. See National Institute of

Corrections, U.S. Department of Justice, *Inmate Behavior Management: The Key to a Safe and Secure Jail* 1-2 (2009). Failing to impose stronger sanctions against spoliation, in short, will reduce inmates' trust in correctional officers and thereby increase the risk of violent interactions in jails and prisons—further inhibiting the proper operation of correctional facilities.

B. The Eighth Circuit's Approach Will Reduce Public Trust In The Police And Hinder Efforts To Protect Public Safety

More broadly, too, allowing law-enforcement officers to destroy evidence without meaningful consequences will also diminish the public's trust in and cooperation with good-faith policing efforts. Police officers "occupy positions of great public trust and high public visibility" in our society. *Gilbert* v. *Homar*, 520 U.S. 924, 932 (1997). But if officers who violate that trust are not held to account, the government cannot "maintai[n] public confidence * * * in its police force." *Ibid.* The Eighth Circuit's improper approach to adverse-inference instructions at summary judgment magnifies the risk that officers who destroy evidence will escape liability. The ensuing loss of public confidence will only exacerbate existing tensions between law-abiding police officers and their communities and undermine law enforcement's ability to maintain public safety.

"Effective police work, including the detection and apprehension of criminals, requires that the police have the trust of [their] community." *Reynolds* v. *City of Chicago*, 296 F.3d 524, 530 (7th Cir. 2002). "[A] police department's ability to protect the public depends on the public's trust that the police department will use its powers responsibly and adequately discipline

officers who do not." *Crouse* v. *Town of Moncks Corner*, 848 F.3d 576, 589 (4th Cir. 2017) (Motz, J., concurring in the judgment). The extent to which members of the public cooperate with police is a product of that trust: They need to credit the good faith of officers in order to feel comfortable calling on law enforcement to help in emergencies and aiding police investigations. See, *e.g.*, Kyle Peyton et al., *A Field Experiment on Community Policing and Police Legitimacy*, 116 Proc. Nat'l Acad. Scis. 19,894, 19,894 (2019) (finding that even "a single instance of positive contact with a uniformed police officer" can "substantially improve" a person's "attitud[e] toward police, including legitimacy and willingness to cooperate"); Emily Ekins, Cato Institute, *Policing in America* 1 (2016), https://perma.cc/U56H-D2MM ("Groups who feel less favorable toward local law enforcement are less certain they would report a crime they witnessed. * * * [W]hen the police have legitimacy, the law has legitimacy, which encourages compliance and cooperation.").

Public trust in police also enhances the effectiveness of law enforcement's interactions with the public. People are also "more willing to defer to [law enforcement's] directives and decisions" when they believe that they are being treated fairly. Tom R. Tyler and Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* 7 (2002). Police officers likewise need to feel trusted by the people they serve to do their jobs effectively. See *Harris* v. *Pittman*, 927 F.3d 266, 286 (4th Cir. 2019) (Wilkinson, J., dissenting) (observing that "societal respect" for law enforcement is necessary to sustain "professional police work").

Consequences for police misconduct are imperative to building that trust. "Nothing is more corrosive to public confidence in our criminal justice system

than the perception that there are two different legal standards"—one for law-enforcement officials "and another for everyone else." *United States* v. *Taffaro*, 919 F.3d 947, 949 (5th Cir. 2019) (Ho, J., concurring in the judgment). Even the bad acts of a small number of officers can poison community trust in the police if they are not met with appropriate consequences. See Office of Community Oriented Policing Services, U.S. Department of Justice, *Building Trust Between the Police and the Citizens They Serve* 17 (2014), https://perma.cc/5WEC-NVSB; see also *United States* v. *Ulbricht*, 858 F.3d 71, 105 (2d Cir. 2017) ("[W]hen law enforcement officers * * * violate the rights of citizens" or engage in other misconduct, "they undermine the public's vital trust in the integrity of law enforcement" and may "compromise the investigations and prosecutions on which they work" unless they are held to account.).

The Eighth Circuit's approach, by diminishing the force of a valuable tool for police accountability, would further erode police-community relations. Adverse-inference instructions are an important way of maintaining public trust in law enforcement because they empower the jury—"drawn from a cross-section of the community" and designed to represent the public—to determine the consequences of spoliation. *Thiel* v. *Southern Pacific Co.*, 328 U.S. 217, 220-225 (1946). Allowing the jury, not the court, to weigh the significance of missing evidence ensures that the public decides when to hold officers accountable for destroying evidence. And police, too, may benefit from the added public legitimacy that ensues when officers are found not liable by a jury despite the court's issuance of an adverse-inference instruction. Cf. Michael T. Cahill, *Punishment Decisions at Conviction: Recognizing the Jury as Fault-Finder*, 2005 U. Chi. Legal F. 91, 133

(suggesting, in the criminal context, that increased jury participation "enhance[s] the system's legitimacy among the general public"). The Eighth Circuit's rule obstructs this trust-building function by empowering trial courts to keep cases from juries based on courts' own assessments of how jurors should have viewed the record, exacerbating the perceived lack of accountability for officers.

The loss of trust that the Eighth Circuit's decision exacerbates will likely have significant adverse practical effects. If people do not feel comfortable calling on the police in a crisis, that will threaten public safety. See Andrew Goldsmith, *Police Reform and the Problem of Trust*, 9 Theoretical Criminology 443, 443 (2005) ("Without public trust in police, 'policing by consent' is difficult or impossible and public safety suffers."). And if community members are less likely to cooperate in police investigations, police officers will find it harder to discharge their duties and protect the public in the future. See David S. Kirk et al., *The Paradox of Law Enforcement in Immigrant Communities: Does Tough Immigration Enforcement Undermine Public Safety?*, 641 Annals Am. Acad. Pol. & Soc. Sci. 79, 79 (2012) (lawless actions by officers "undermin[e] individuals' willingness to cooperate with the police and engage in the collective actions necessary to socially control crime"). Providing meaningful accountability for spoliation therefore benefits both the overwhelming majority of law-enforcement officers who serve honorably and the communities who rely on them to ensure public safety.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JONATHAN C. BOND
Counsel of Record
LAVI M. BEN DOR
JOHN N. REED
TRISTAN LOCKE
AUDREY PAYNE
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
JBond@gibsondunn.com

Counsel for Amicus Curiae

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