NO. 25-29

IN THE
Supreme Court of the United States

PRISCILLA VILLARREAL,
Petitioner,

v.

ISIDRO R. ALANIZ, IN HIS INDIVIDUAL CAPACITY, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF YOUNG AMERICA'S FOUNDATION AND MANHATTAN INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Young America's Foundation ("YAF") is a national nonprofit organization committed to ensuring that increasing numbers of young Americans understand and are inspired by the ideas of individual freedom, a strong national defense, free enterprise, and traditional values. YAF's National Journalism Center trains budding journalists to be truth-seekers who are ethical and bold in exercising their First Amendment rights.

YAF leads the Conservative Movement on campuses throughout the country by sponsoring campus lectures and other activities, which often results in conflict with university leaders who disagree with YAF's ideas. Often, those conflicts result in First Amendment litigation in which qualified immunity plays a major role. *E.g.*, Mot. to Dismiss, *Johnson* v. *University of Colo.*, No. 1:25-cv-00390 (D. Colo. June 6, 2025), ECF No. 41; *Young America's Found.* v. *Kaler*, 482 F. Supp. 3d 829, 856–66 (D. Minn. 2020), *vacated by* 14 F.4th 879 (8th Cir. 2021). YAF has a significant interest in ensuring that officials who commit obvious violations of the First Amendment don't obtain qualified immunity.

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel were timely notified of this brief as required by Supreme Court Rule 37.2.

YAF's strong interest in this case is magnified by its National Journalism Center. Over the last 45 years, the Center has trained over 2,250 journalists to combat bias in the mainstream media. YAF also has a significant interest in protecting those journalists' First Amendment rights.

The Manhattan Institute for Policy Research is a nonpartisan public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. To that end, it has historically sponsored scholarship supporting the rule of law and opposing government overreach, including in the marketplace of ideas.

Amici file this brief to emphasize that qualified immunity doctrine was never intended to shield government officials, especially at the pleadings stage, who allegedly plan and execute a clear-cut violation of First Amendment rights.

SUMMARY OF THE ARGUMENT

By granting Respondents qualified immunity after they arrested Petitioner Villarreal for her protected journalistic activities, the decision below misapplied precedent, distorted constitutional standards, and undermined core First Amendment rights.

First, the opinion started from the wrong baseline and elevated an obscure Texas statute above the Constitution, contravening clear precedent. The First Amendment's guarantees limit state law, not the other way around.

Second, for at least four decades this Court has protected routine news-gathering activities under the First Amendment. The opinion's failure to recognize these well-established protections erodes essential free-speech and free-press rights.

Third, the ruling below misapplies qualified immunity by demanding a factually identical precedent to defeat it—a far stricter standard than this Court requires. Plus, the deliberate nature of officials' actions here undermines any claim to immunity; this case doesn't involve split-second decisions under onerous conditions that coincidentally hinder rights. The opinion's narrow approach conflicts with that of this Court and other circuits, granting officials a free pass to violate clear-cut First Amendment rights.

This Court should grant certiorari and reverse, while reaffirming the First Amendment's robust constitutional safeguards for "the freedom of speech, or of the press." U.S. Const. amend. I.

ARGUMENT

I. The decision below gave short shrift to the First Amendment, Ms. Villarreal's allegations, and the Court's GVR order.

On remand, the en banc court of appeals—with minimal process or explanation—ruled against Ms. Villarreal again, reinstating its prior decision nearly wholesale. Pet.App.2a–4a. The First Amendment, Ms. Villarreal's allegations, and the Court's GVR order suggested the opposite result.

Qualified immunity should not be invoked lightly, particularly at the pleadings stage and especially when basic free-speech and free-press rights are at stake. *E.g.*, *Stringer* v. *County of Bucks*, 141 F.4th 76, 85–86 (3d Cir. 2025); *Wesley* v. *Campbell*, 779 F.3d 421, 433–34 (6th Cir. 2015). Regrettably, the opinion below did so, inverting the standard of review in the process. Rather than accept her plausible "allegations … as true," *Siegert* v. *Gilley*, 500 U.S. 226, 227 (1991), the opinion overlooked Ms. Villarreal's claims that officials tainted the magistrate's probable cause determination—a central issue in this case. Pet.App.52a; accord *id.* at 21a (Higginson, J., dissenting) (dismissing the retaliation claim hinges on "probable cause to arrest" Ms. Villarreal, but she alleges "bad probable cause," which just like "[no] probable cause" renders dismissal at the pleading stage inappropriate).

That is a significant error. On a motion to dismiss, Ms. Villarreal's burden is minimal: she must show that the complaint "*may be understood* to state [First or] Fourth Amendment claims that could not properly be dismissed for failure to state a claim." *Sause* v.

Bauer, 585 U.S. 957, 960 (2018) (per curiam) (emphasis added).

Six years of litigation have shown that Ms. Villarreal's allegations *can* be understood that way, as evidenced by six Fifth Circuit panel majority or en banc dissenting opinions.[2] If Ms. Villarreal's meticulous allegations can be dismissed at the pleading stage, few First Amendment claims will make it to discovery in the Fifth Circuit, and officials will enjoy free rein to flout the Constitution. Pet.21.

The decision below reached the wrong outcome because it focused on applying a state law, Texas Penal Code § 39.06(c), rather than the clear free-speech and free-press implications of doing so. Pet.App.34a–43a. But qualified immunity doesn't allow officials to disregard the Constitution, which is "the supreme Law of the Land." U.S. Const. art. VI, cl. 2; accord *Sause*, 585 U.S. at 959. "[R]egulations aimed at proper governmental concerns can restrict unduly the exercise of rights protected by the First Amendment." *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue*, 460 U.S. 575, 592 (1983); accord *United Mine Workers of Am., Dist. 12* v. *Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967) ("laws which actually affect the exercise of [First Amendment] rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence …."). And when state law and the

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[2] Pet.App.19a (Higginson, J., dissenting); *id.* at 64a–67a (Graves, J., dissenting); *id.* at 69a–70a (Higginson, J., dissenting); *id.* at 83a–88a (Willett, J., dissenting); *id.* at 89a–91a (Ho, J., dissenting); *Villareal* v. *City of Laredo*, 44 F.4th 363, 371–73 (5th Cir. 2022).

Constitution collide, the Constitution prevails. *Minneapolis Star*, 460 U.S. at 592–93; U.S. Const. art. VI, cl. 2; *Sause*, 585 U.S. at 959.

Prior to Ms. Villarreal's arrest, both this Court and the Fifth Circuit held "that *news-gathering* is entitled to [F]irst [A]mendment protection, for 'without some protection for *seeking out the news*, freedom of the press could be eviscerated.'" *In re Express-News Corp.*, 695 F.2d 807, 808 (5th Cir. 1982) (quoting *Branzburg* v. *Hayes*, 408 U.S. 665, 681 (1972)) (emphasis added). So no reasonable official would apply § 39.06(c) to Ms. Villarreal without considering her free-speech and free-press rights. Accord Pet.15, 17–20. And Ms. Villarreal's complaint "may be understood to state [First or] Fourth Amendment claims that could not properly be dismissed." *Sause*, 585 U.S. at 960. It's quite plausible that no official "of reasonable competence" would have "requested the warrant[s]" for Ms. Villarreal's arrest in the first place. *Malley* v. *Briggs*, 475 U.S. 335, 346 n.9 (1986); accord Pet.24–25.

The opinion below did not grapple with these issues on remand, merely citing *Reichle* v. *Howards*, 566 U.S. 658 (2012), and two circuit rulings where probable cause plainly supported plaintiffs' arrests for *non-speech* crimes. Pet.App.3a–4a. But those cases are materially different. Whereas the *Reichle* plaintiff didn't "challenge the Court of Appeals' probable-cause determination," 566 U.S. at 662 n.3, Ms. Villarreal does on strong First Amendment grounds, e.g., Pet.23–25, 29–31. And the Sixth and Seventh Circuit didn't rule on "similar facts." Pet.App.4a. They applied *Reichle* to retaliation claims where probable cause clearly supported the plaintiff's arrest for generally *unprotected* activity, including using "a

computer to disrupt or impair police functions," *Novak* v. *City of Parma*, 33 F.4th 296, 303 (6th Cir. 2022), and "driving the wrong way on a one-way street," *Lund* v. *City of Rockford*, 956 F.3d 938, 942 (7th Cir. 2020). But here, officials sought to arrest Ms. Villarreal for asking a police officer questions about a matter of public concern and reporting what the officer volunteered, which is generally *protected* by the First Amendment. Pet.26.

The opinion below tried to fit a square peg into a round hole by ignoring the question of whether probable cause supported Ms. Villarreal's arrest. But *Novak* and *Lund* acknowledge that officers can't use protected speech to show probable cause that a crime has been committed. E.g., *Novak*, 33 F.4th at 304 ("Protected speech cannot serve as the basis for probable cause.") (citation modified); *Lund*, 956 F.3d at 947 (explaining officers didn't "arrest[ ] Lund solely for his First Amendment activity"). So those decisions *conflict* with the opinion's probable-cause ruling here, which never considered whether asking factual questions and publishing an officer's willing responses is protected by the First Amendment. Pet.App.34a–43a.

The opinion's myopic focus on state law transforms qualified immunity into a nearly impenetrable bar to First Amendment claims against law enforcement. Pet.36–38. This Court should grant plenary review and reverse the grant of qualified immunity. Alternatively, the Court should issue a per curiam reversal because the ruling below directly contradicts *Sause*. *Infra* pp.12–14. Either way, the Court should allow Ms. Villarreal's claims to proceed to discovery.

II. Ms. Villarreal's First Amendment rights were clearly established and obvious at the time of her arrest.

The opinion below misjudged qualified immunity doctrine twice over. This Court's precedent clearly established Ms. Villarreal's free-speech and free-press rights when law enforcement officials schemed to arrest her and put her in jail for seeking and reporting factual information about a police matter. And those constitutional protections were obvious in light of the First Amendment's text and principles long established by this Court's decisions.

A. Ms. Villarreal's free-speech and free-press rights have been clearly established for decades.

Ms. Villarreal's free-speech and free-press rights have been clearly established for over 40 years. The First Amendment protects the "right of citizens to inquire, to hear, to speak, and to use information." *Citizens United* v. *FEC*, 558 U.S. 310, 339 (2010). These rights extend to "news gathering," which "qualif[ies] for First Amendment protection" to prevent "freedom of the press" from being "eviscerated." *Branzburg*, 408 U.S. at 681; accord *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 576 (1980) (acknowledging "a right to gather information" (quoting *Branzburg*, 408 U.S. at 681)). So when Respondents carried out Ms. Villarreal arrest, the First Amendment's text and this Court's decisions made four principles clear.

First, the First Amendment protects "routine newspaper reporting techniques," such as asking questions of individuals—including government

officials—to gather information from willing sources for publication. *Smith* v. *Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979); accord *Florida Star* v. *B.J.F.*, 491 U.S. 524, 538 (1989) (protecting a "routine newspaper reporting technique" and explaining that once officials place private "information in the public domain," it's up to reporters "what to publish or broadcast") (citation modified). So journalists are "free to seek out" and request information from "public officials[ ] and [government] personnel," including police officers. *Houchins* v. *KQED, Inc.*, 438 U.S. 1, 15 (1978) (plurality opinion); accord *id.* at 32 (Stevens, J., dissenting) (positing even greater constitutional "protection for the acquisition of information about the operation of public institutions").

Second, journalists' "use of confidential sources … is not forbidden or restricted." *Branzburg*, 408 U.S. at 681. Reporters are "free to seek out sources of information not available to members of the general public." *Pell* v. *Procunier*, 417 U.S. 817, 834 (1974). They are not limited to official channels. Indeed, a "free press cannot be made to rely solely upon the sufferance of government to supply it with information." *Smith*, 443 U.S. at 104; accord *First Nat'l Bank of Bos.* v. *Bellotti*, 435 U.S. 765, 783 (1978) (government can't "limit[ ] the stock of information from which members of the public may draw").

Third, whether there is a related financial benefit from breaking news doesn't change the analysis. Journalists' "[s]peech … is protected even though it is carried in a form that is 'sold' for profit." *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 761 (1976). The same is true of books, newspapers, and journals. "[T]he degree of

First Amendment protection is not diminished" whether "speech is sold" or "given away." *City of Lakewood* v. *Plain Dealer Publ'g Co.*, 486 U.S. 750, 756 n.5 (1988).

Finally, the government has ample tools to prevent leaks. But if those measures fail, the government can't punish journalists for seeking, receiving, or publishing information they obtain via routine reporting techniques without satisfying strict scrutiny. *Florida Star*, 491 U.S. at 533–34 (state officials can't punish the publication of "lawfully obtain[ed] truthful information" unless they're "further[ing] a state interest of the highest order") (citation modified); *Smith*, 443 U.S. at 103–04 ("[i]f the information is lawfully obtained …, the state may not punish its publication" absent a compelling interest). Few interests will outweigh journalists' right to speak and the public's right to receive "information and ideas [that] are published." *Pell*, 417 U.S. at 832. The government may punish the leaker—not the journalist. *Florida Star*, 491 U.S. at 535 ("[W]here the government has made certain information publicly available, it is highly anomalous to sanction persons other than the source of its release."); *Landmark Commc'ns, Inc.* v. *Virginia*, 435 U.S. 829, 837 & n.10 (1978) (government could punish "Commission members and staff employees" for leaks but not "third persons," such as reporters).

The lower court ignored these First Amendment principles—twice. It allowed officials to punish Ms. Villarreal for using routine reporting techniques, Pet.App.39a–41a; going outside of official police channels, *id.* at 26a, 33a, 39a; potentially deriving meager financial rewards from her online reporting,

id. at 26a, 40a; and targeting a citizen journalist who merely asked questions rather than the police officer who leaked information, *id.* at 38a–41a. All of this violates the First Amendment's text and the Court's established precedent. So qualified immunity doesn't apply, especially at the pleadings stage where courts accept Ms. Villarreal's allegations as true and draw all reasonable inferences in her favor. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

B. Ms. Villarreal's arrest was obviously unconstitutional in light of the First Amendment's text and principles long established by this Court's decisions.

Certain government actions are so "obvious[ly]" unconstitutional, *Rivas-Villegas* v. *Cortesluna*, 595 U.S. 1, 6 (2021) (per curiam), or "egregious," *Taylor* v. *Riojas*, 592 U.S. 7, 9 (2020) (per curiam), that qualified immunity dissolves without a factually analogous case on the books. This obviousness exception is associated with *Hope* v. *Pelzer*, 536 U.S. 730, 741 (2002), which explained that "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question." But the exception actually predates *Hope*. E.g., *Anderson* v. *Creighton*, 483 U.S. 635, 640 (1987) (plaintiffs may overcome qualified immunity without showing that "the very action in question has previously been held unlawful").

The First Amendment's text, as well as enduring principles established by this Court's decisions, obviously protected Ms. Villarreal's questions regarding law-enforcement matters and publication of factual information freely disclosed by an officer.

The Constitution doesn't bar government from "abridging the freedom of speech, or of the press" for nothing. U.S. Const. amend. I; accord *Griswold* v. *Connecticut*, 381 U.S. 479, 482 (1965) (states can't "contract the spectrum of available knowledge," as "[t]he right of freedom of speech and press includes not only the right to utter or to print, but … the right to receive" information). The People can't "petition the Government for a redress of grievances" unless they know what those grievances are, often via protected reporting. U.S. Const. amend. I; accord *United Mine Workers*, 389 U.S. at 222 (the right to petition is "intimately connected" with "free speech and free press").

The reinstated decision below conflicts with both text and precedent, all but erasing the obviousness exception in First Amendment cases that involve free exercise, free speech, free press, free assembly, free association, or the right to petition. Pet.App.54a–60a. In particular, the lower court refused to accept that "the 'obvious' … exception applies broadly to *arrests that may impinge on First Amendment rights*." *Id.* at 49a (emphasis added). Obviousness, the opinion said, is "no more than a *possible* exception," *id.* at 48a, or one narrowly confined to "Eighth Amendment cases," *id.* at 55a.[3] But that conclusion is dangerously wrong, and this Court should grant review to say so.

Sause is directly on point. There, two police officers allegedly responded to a noise complaint,

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[3] This Court often raises the obviousness exception in Fourth Amendment cases, which shows the exception isn't an Eighth Amendment peculiarity. E.g., *Rivas-Villegas*, 595 U.S. at 6; *Kisela* v. *Hughes*, 584 U.S. 100, 105 (2018) (per curiam); *White* v. *Pauly*, 580 U.S. 73, 79–80 (2017) (per curiam); *Brosseau* v. *Haugen*, 543 U.S. 194, 199–200 (2004) (per curiam).

entered Ms. Sause's apartment, engaged in abusive conduct, and cited Sause on manufactured charges of disorderly conduct and interfering with law enforcement. *Sause* v. *Bauer*, 859 F.3d 1270, 1273 (10th Cir. 2017). Meanwhile, the officers allegedly ordered Ms. Sause, who was frightened, to get off her knees and cease praying. *Ibid*. Ms. Sause sued the officers for violating her First Amendment rights. The district court dismissed her complaint, and the Tenth Circuit affirmed based on qualified immunity, reasoning that Ms. Sause didn't "identify a single case in which [the Tenth Circuit], or any other court for that matter, has found a First Amendment violation based on a factual scenario even remotely resembling the one … here." *Id.* at 1275.

Ms. Sause appealed to this Court, claiming "that the absence of a prior case involving the unusual situation alleged to have occurred … does not justify qualified immunity." *Sause*, 585 U.S. at 959. This Court agreed and reversed the Tenth Circuit based on the obviousness exception. *Id.* at 959–60. "Prayer unquestionably constitutes the 'exercise' of religion." *Id.* at 959. So a reasonable officer could not "doubt that the First Amendment protects the right to pray." *Ibid*. Accordingly, the Court reversed the grant of qualified immunity at the pleadings stage and remanded for further proceedings. *Id.* at 960.

The same logic applies here. No reasonable official would doubt that Ms. Villarreal's routine journalism constituted an exercise of her "freedom of speech, or of the press." U.S. Const. amend. I. Yet the decision below ignored the First Amendment's text and turned *Sauce* on its head, saying that decision somehow supports *granting* qualified immunity here.

Pet.App.49a, 56a. Not so. *Sauce* illustrates that qualified immunity isn't a "get out of jail free" card for egregious constitutional infractions that no one has tried before. Only this Court can remedy the lower court's excusal of clear-cut First Amendment violations, which is irreconcilable with decisions by the Sixth, Eighth, and Tenth Circuits. Pet.33a–36a.

III. Officials' care and deliberation in jailing Ms. Villarreal for her reporting makes a grant of immunity especially inappropriate.

Officials' care and deliberation in plotting to jail and humiliate Ms. Villarreal deserves special mention. Qualified-immunity typically protects law enforcement officers making split-second decisions in the heat of the moment. E.g., *Lozman* v. *City of Riviera Beach*, 585 U.S. 87, 98 (2018) ("In deciding whether to arrest, police officers often make split-second judgments."); *Graham* v. *Connor*, 490 U.S. 386, 397 (1989) (law enforcement are often involved in "circumstances that are tense, uncertain, and rapidly evolving"). But there was no exigency or split-second decision-making here.

Respondents allegedly spent *six months* formulating a scheme to punish Ms. Villareal for her reporting, choosing to leverage a never-before-used provision to achieve their unconstitutional ends. Pet.1, 7–9, 31, 39. In other words, law enforcement officials plotted with legal counsel to find some reason—any reason—to arrest and humiliate a critic, opting to dust off an obscure state law and ignore the Constitution in the process. *Id.* at 1, 8; Pet.App.90a–91a. No justification exists for granting officials "who have time to make calculated choices about … [their] unconstitutional"

actions "the same [qualified-immunity] protection as a police officer who makes a split-second decision to use force in a dangerous setting." *Hoggard* v. *Rhodes*, 141 S. Ct. 2421, 2422 (2021) (Thomas, J., statement respecting the denial of cert.).

The complaint alleges that disgruntled officials engaged in a premeditated attack on Ms. Villareal's reporting. Pet.7–9. Yet the opinion below ignored this key consideration, despite several judges highlighting it. *E.g.*, Pet.App.5a–6a, 13a–16a (Oldham, J., concurring) (questioning whether qualified immunity's rationale applies in cases like this); *id.* at 83a (Willett, J., dissenting) ("This was not the hot pursuit of a presumed criminal; it was the premeditated pursuit of a confirmed critic."); *Villarreal* v. *City of Laredo*, 44 F.4th 363, 371 (5th Cir. 2022), *vacated by* 52 F.4th 265 (5th Cir. 2022) ("There is a big difference between 'split-second decisions' by police officers and 'premeditated plans to arrest a person for her journalism, especially by local officials who have a history of targeting her because of her journalism.'").

This Court should grant review to clarify that qualified immunity isn't a "one-size-fits-all doctrine." *Hoggard*, 141 S. Ct. at 2421 (Thomas, J., statement respecting the denial of cert.). Officials "deserve some measure of deference" when they're "forced to make split-second, life-and-death decisions." *Wearry* v. *Foster*, 52 F.4th 258, 259 (5th Cir. 2022) (per curiam) (Ho, J., concurring in denial of reh'g en banc). But when "officials make the deliberate and considered decision to trample on a citizen's constitutional rights, they deserve to be held accountable." *Ibid.*

CONCLUSION

Qualified immunity doesn't shield officials who choose to violate established and obvious First Amendment rights in an attack planned with legal counsel's assistance over months. For all the above reasons and those presented by Petitioner, the Court should grant review.

Respectfully submitted,

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AUGUST 2025