

**In the Supreme Court of the United States**

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PRISCILLA VILLARREAL,

*Petitioner,*

*v.*

ISIDRO R. ALANIZ, *et al.*,

*Respondents.*

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*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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**BRIEF OF INDEPENDENT JOURNALISTS AS  
AMICI CURIAE IN SUPPORT OF PETITIONER**

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## TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities .....	ii
Identity and Interest of <i>Amici Curiae</i> .....	1
Summary of Argument .....	3
Argument .....	4
I. Independent journalists are an increasingly important source of news. ....	5
II. Independent journalists already face considerable obstacles in obtaining information from government sources.....	8
A. Government Employee Gag Orders and Public Information Officers.....	8
B. Press Credential Restrictions .....	12
C. Public Records Process .....	14
III. The threat of retribution shielded by the Fifth Circuit's broad qualified immunity regime will chill a broad range of legitimate journalism.....	17
Conclusion.....	22

## TABLE OF AUTHORITIES

<b>Cases:</b>	<b><u>Page(s)</u></b>
<i>N.Y. Times Co. v. Sullivan</i> , 376 U.S. 254 (1964) .....	18
<i>Paxton v. Am. Oversight</i> , __ S.W.3d __, No. 24-0162, 2025 WL 1793117 (Tex. June 27, 2025) .....	15
<i>State v. Ford</i> , 179 S.W.3d 117 (Tex. App. 2005) .....	20
<i>Uvalde Consol. Indep. Sch. Dist. v. Tex. Trib.</i> , __ S.W.3d __, No. 04-24-00509-CV, 2025 WL 1970278 (Tex. App. July 16, 2025) .....	16
<i>Villarreal v. City of Laredo</i> , 94 F.4th 374 (5th Cir. 2024) .....	17, 19
 <b>Statutes:</b>	
Tex. Gov’t Code §§ 552.101-552.163 .....	19
Tex. Gov’t Code § 552.103 .....	14
Tex. Gov’t Code § 552.108 .....	19
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Tex. Gov’t Code § 552.1081(2) .....	18
Tex. Gov’t Code § 552.1085(c) .....	14
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Tex. Gov’t Code § 552.126 .....	18
Tex. Gov’t Code § 552.134(a) .....	18

**Statutes—Continued:** **Page(s)**

Tex. Gov't Code § 552.1345.....	18
Tex. Penal Code § 39.06(c).....	18
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**Rules:**

Supreme Court Rule 37.2 .....	1
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## IDENTITY AND INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici curiae* are individual journalists and a non-profit media outlet operating in Texas, where the Petitioner Priscilla Villarreal was arrested for her journalistic activities in this case.

*Amici curiae* Avi Adelman and Steven Monacelli, like Petitioner Priscilla Villarreal, are independent journalists—i.e., journalists that are not influenced by government or corporate interests. And like Ms. Villarreal, they have been arrested or detained by police officers while reporting on law enforcement’s public performance of their duties.<sup>2</sup> They are therefore interested in the legal safeguards protecting reporters and photographers from government reprisal.

*Amicus curiae* the Dallas Free Press is a non-profit news organization, meaning that it is not funded through traditional advertising or reader subscriptions. The Dallas Free Press focuses its journalistic efforts on historically disinvested

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae* or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Additionally, pursuant to Rule 37.2, *amici curiae* state that counsel of record for each party received timely notice of *amici curiae*’s intent to file this brief.

<sup>2</sup> Jacob Vaughn, *Journalists Speak Out on Treatment During Police Brutality Protests*, Dall. Observer (Sept. 9, 2020), <https://perma.cc/M3JY-FD35>; Eric Nicholson, *DART Cop Arrests Barking Dog Avi Adelman for Taking Photos at Rosa Parks Plaza*, Dall. Observer (Feb. 12, 2016), <https://perma.cc/F3VU-JUHS>.

neighborhoods in the Dallas area, seeking to give voice to community issues and hold leaders accountable. The Dallas Free Press, like many non-profit news organizations, relies on and publishes the work of freelance independent journalists—specifically, through the Dallas Documenters program, through which freelance citizen journalists are paid and trained to attend public meetings and take notes, which are then converted to published news stories.<sup>3</sup>

*Amici curiae* are concerned by the impact that the Fifth Circuit’s decision will have on journalists in Texas and other states that may criminalize routine newsgathering activities. This brief brings useful information to this Court’s attention by explaining the efforts that government agencies across the country have already taken to restrict media communications, and by exploring the likely chilling effect of the Fifth Circuit’s decision. Because of *amici curiae*’s backgrounds in journalism and personal experience, they are well-positioned to address these issues.

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<sup>3</sup> *Dallas Documenters*, Dall. Free Press, <https://perma.cc/PGX2-E2TG> (last visited Aug. 5, 2025).

## SUMMARY OF ARGUMENT

Due to the increased visibility that online platforms have given to independent journalists like Priscilla Villarreal, many consumers are turning to such journalists for news. These journalists, in addition to reporting the news, often play an investigative role by seeking out information about current events from government personnel.

But governments do not always take kindly to the spotlight. Countless public entities at federal, state, and local levels have implemented policies forbidding their employees from communicating with journalists without the involvement of a “public information officer.” These officials play a powerful role in controlling and shaping the media narrative by monitoring interviews, vetting questions from the press, drafting prepared statements, and sometimes even reviewing journalists’ work before publication. Independent journalists must also sometimes grapple with restrictive policies that selectively grant press access to members of the media. And the cumbersome process of requesting public records can take many months or years without even yielding complete information. Unsurprisingly, journalists must often confront the difficult task of going around official channels if they wish to get a full picture of the truth.

While these policies (despite their questionable legality) already provide government agencies with a shield against unwelcome media scrutiny, the Fifth Circuit in this case has given them a sword. Not only may governments curate the information that they release to the public, but now they can wield criminal

enforcement powers against any journalist that probes too deeply.

The threat of such punitive action—sanctioned by the Fifth Circuit’s decision—is bound to chill journalistic activities protected under the First Amendment. This is especially true because the Texas criminal statute at issue is written in broad terms: journalists will likely feel uncertainty about what qualifies as information that “has not been made public.” Many journalists may therefore refrain from cultivating sources and asking difficult questions of government officials altogether, depriving the public of accurate information about matters of public concern. To avoid this outcome, this Court should grant the petition for certiorari and reverse the Fifth Circuit’s judgment.

## ARGUMENT

Independent journalists like Priscilla Villarreal are an important source of news in today’s information economy. In an effort to report thoroughly on government activities, these journalists often seek information directly from public employees. But in recent decades, government agencies across the country have implemented policies that make it difficult to access information without interference from public information officers. Here, the Fifth Circuit exacerbated that problem by allowing governments to target inquisitive journalists with criminal enforcement powers under a moribund statute. This decision is bound to chill routine newsgathering activities protected under the First Amendment, and it should be reversed.

## **I. Independent journalists are an increasingly important source of news.**

In recent years, traditional sources of news—particularly newspapers, radio, and local television—have gradually lost their audiences.<sup>4</sup> By some estimates, total U.S. daily newspaper circulation fell by more than 66% between 1990 and 2022.<sup>5</sup> More than one-third of American newspapers have shut down since 2005.<sup>6</sup> The percentage of Americans listening weekly to traditional radio shrank by around 10% between 2009 and 2022.<sup>7</sup> And average viewership of local evening news among some of the top affiliate networks dropped from just over four million in 2016 to just over three million in 2022.<sup>8</sup> These declines have led some traditional news outlets to conduct multiple rounds of large-scale layoffs.<sup>9</sup>

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<sup>4</sup> Michael Lipka & Elisa Shearer, *Audiences Are Declining for Traditional News Media in the U.S. – with Some Exceptions*, Pew Research Center (Nov. 28, 2023), <https://perma.cc/QY9B-T3EP>.

<sup>5</sup> Sarah Naseer & Christopher St. Aubin, *Newspapers Fact Sheet*, Pew Research Center (Nov. 10, 2023), <https://perma.cc/2XRL-ETMD>.

<sup>6</sup> Zach Metzger, *The State of Local News: The 2024 Report*, Northwestern Local News Initiative (Oct. 23, 2024), <https://perma.cc/2R7V-GJVP>.

<sup>7</sup> Christopher St. Aubin, *Audio and Podcasting Fact Sheet*, Pew Research Center (June 15, 2023), <https://perma.cc/2GYA-ZM86>.

<sup>8</sup> Christopher St. Aubin & Sarah Naseer, *Local TV News Fact Sheet*, Pew Research Center (Sept. 14, 2023), <https://perma.cc/2V35-JKV3>.

<sup>9</sup> Nic Newman et al., *Reuters Institute Digital News Report 2024* 114 (2024), <https://perma.cc/3WFFV-JY59>.



Meanwhile, the prevalence of newer online news sources (including digital-first nonprofit news media) is on the rise,<sup>10</sup> with a majority of Americans stating that they prefer to obtain news via digital devices.<sup>11</sup> More than half of American adults consume news through social media platforms, most commonly Facebook, YouTube, Instagram, and TikTok.<sup>12</sup> And younger adults are especially likely to trust information obtained on these platforms.<sup>13</sup>

This changing media environment presents new opportunities for independent journalists—i.e., those that are unencumbered by government or corporate for-profit interests. Compared to traditional media, online modes of communication pose virtually no barriers to entry. Any budding journalist with a free blog or social media account can build a following and contribute to the marketplace of ideas. And the

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<sup>10</sup> Hailey Reissman, *No Vacations, No Sleep, but Good Journalism: What It's Like to Start a Nonprofit Newsroom*, University of Pennsylvania: Annenberg School for Communication (May 9, 2024), <https://perma.cc/2K2M-XE2U>.

<sup>11</sup> Christopher St. Aubin & Jacob Liedke, *News Platform Fact Sheet*, Pew Research Center (Sept. 17, 2024), <https://perma.cc/E85P-2EQ8>; see also Newman et al., *supra* note 9, at 115 (showing internet as most popular source of news since 2013).

<sup>12</sup> Christopher St. Aubin & Jacob Liedke, *Social Media and News Fact Sheet*, Pew Research Center (Sept. 17, 2024), <https://perma.cc/2Q4Q-4YZA>.

<sup>13</sup> Elisa Shearer & Kirsten Eddy, *Republicans Have Become More Likely Since 2024 to Trust Information from News Outlets, Social Media*, Pew Research Center (May 8, 2025), <https://perma.cc/F5D8-MMQJ>.

growing—and already-extensive—set of non-profit news organizations includes publication platforms that are often far more accessible for independent journalists than their traditional counterparts. The internet especially has given a platform to minority voices that were historically underrepresented in traditional media.<sup>14</sup>

The benefits of increased access extend to journalists and the public alike. Journalists are less dependent on gatekeepers at institutional news outlets who limit the kinds of information that they are willing to publish.<sup>15</sup> And members of the public are presented with a wider assortment of facts and perspectives that are not constrained by the agendas of traditional news providers. In short, independent journalists form a growing and important part of the modern information economy.

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<sup>14</sup> Bella Ross, Opinion, *Social Media Is the New Information Frontier. Here's How It Can Make Journalism Better*, San Diego Union-Trib. (Oct. 13, 2022), <https://perma.cc/MN2A-YTSC>; see also Sarah Naseer, Christopher St. Aubin & Michael Lipka, *How Hispanic Americans Get Their News*, Pew Research Center (Mar. 19, 2024), <https://perma.cc/MR7Y-W73C> (noting that Latino Americans are particularly likely to prefer getting their news from digital devices).

<sup>15</sup> See Stephen Lacy et al., *PEJ Report on Citizen Journalism Sites 2*, Pew Research Center (2008), <https://perma.cc/VPQ8-E7J6>.

## **II. Independent journalists already face considerable obstacles in obtaining information from government sources.**

Unlike established news organizations, independent journalists like Ms. Villarreal often lack access to well-developed channels for obtaining information, and instead must cultivate a network of contacts from scratch. These sources can include eyewitnesses, experts, activists, and (most relevantly here) government employees. But in recent decades, government entities have worked to implement policies shielding themselves and their staff from unwelcome media and public attention. Gone are the days when journalists could walk the halls of government agencies, asking questions of employees in their offices.<sup>16</sup> Instead, journalists today face substantial obstacles in their efforts to obtain timely and accurate information.

### **A. Government Employee Gag Orders and Public Information Officers**

Many journalists have noticed “a relatively rapid trend toward prohibiting staff members from communicating to journalists without reporting to some authority, often public information officers,”

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<sup>16</sup> Kathryn Foxhall, *The Growing Culture of Censorship by PIO*, Columbia Journalism Rev. (Aug. 3, 2022), <https://www.cjr.org/criticism/public-information-officer-access-federal-agencies.php>; Alisa Cromer, *Censorship by PIO*, Editor & Publisher (Oct. 18, 2021), <https://perma.cc/QF7R-K47C>.

commonly known as “PIOs.”<sup>17</sup> This trend has been most obvious in the federal government,<sup>18</sup> but such employee “gag orders” are also common in state and local governments across the country—from cabinet-level agencies to public schools and police departments.<sup>19</sup>

Despite these policies’ shaky constitutional footing,<sup>20</sup> they often succeed in their aim of curbing communications between public employees and journalists.<sup>21</sup> According to one study of reporters covering crime, nearly 60% of respondents stated that only some of the time or rarely could they successfully interview police officers without the involvement of a

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<sup>17</sup> Soc’y of Pro. Journalists, *Freedom of Information: Public Information Officers*, <https://perma.cc/EB2X-CU86> (last visited July 9, 2025).

<sup>18</sup> Carolyn S. Carlson & David Cuillier, *Public Information Officers Exert Increasing Controls*, 38(2) *Newspaper Rsch. J.* 198, 204-208 (2017).

<sup>19</sup> Brechner Ctr. for Freedom of Info., *Protecting Sources and Whistleblowers: The First Amendment and Public Employees’ Right to Speak to the Media* 3, 9-14 (Oct. 7, 2019), <https://perma.cc/RUQ6-FQSP>; John Pacenti, *Federal Lawsuit Challenges “Unconstitutional” Key Biscayne Media Policy*, Key Biscayne Indep. (June 25, 2025), <https://perma.cc/YV6G-SXJS>; Soc’y of Pro. Journalists, *Gagged America: What We Found*, <https://perma.cc/J9DZ-HYDZ> (last visited July 9, 2025) (listing government departments with gag policies).

<sup>20</sup> Brechner Ctr. for Freedom of Info., *supra* note 19, at 3-9.

<sup>21</sup> See, e.g., Peter B. Steffensen & Thomas S. Leatherbury, *Press Freedoms Under Pressure: Clinical Perspectives on the State of Press Freedoms in Texas in 2024*, 77 *SMU L. Rev.* 605, 614-616 (2024).

public information officer. Around 26% of the same group said that they never could. And more than half of those reporters stated that a PIO had prevented them from interviewing front-line officers or investigators in a timely manner.<sup>22</sup> In a related study of journalists covering federal agencies, 76% of respondents said that they must obtain approval from public information officers most or all the time before interviewing agency employees, and 69% stated that an agency had prohibited them from interviewing its employees.<sup>23</sup>

When PIOs do allow journalists to interact with public employees, it is often under carefully controlled conditions. PIOs may monitor interviews,<sup>24</sup> limit the number of questions asked, insist that questions be submitted in advance, rely on prepared statements, require officials to speak off the record, or demand the

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<sup>22</sup> Carolyn S. Carlson & Paymon Kashani, *Mediated Access: Crime Reporters' Perceptions of Public Information Officers' Media Control Efforts* 2-3 (Mar. 2016), <https://perma.cc/UT4C-ZD27>.

<sup>23</sup> Carolyn S. Carlson et al., *Mediated Access: Journalists' Perceptions of Federal Public Information Officer Media Control* 5 (Mar. 12, 2012), <https://perma.cc/NK47-RCE3>.

<sup>24</sup> *Id.* at 6 (53% of respondents saying that federal agency officials monitor their interviews most or all of the time); Carolyn S. Carlson & Paymon Kashani, *Mediated Access: Police Public Information Officers' Media Management Efforts* 16 (Mar. 2016), <https://perma.cc/LW7Y-9Q4J> (nearly 80% of law enforcement public information officers agreeing that they feel it necessary to monitor interviews with their police officers).

opportunity to review the journalist's work before publication.<sup>25</sup>

For example, since stepping into the role of Dallas Police Chief in April 2025, Chief Daniel Comeaux, after intervention from his media relations staff, has declined to answer questions about topics of significant public interest, including the Dallas Police Department's immigration enforcement policy.<sup>26</sup> In one instance, a member of the Department's media relations staff repeatedly interrupted a journalist's five-minute interview with the Chief to prevent him from answering certain questions on the basis that it was an "introductory interview."<sup>27</sup> Another media outlet was not allowed to ask any questions about immigration during its five-minute interview.<sup>28</sup> In another instance, the City Attorney's Office prevented the Chief from answering questions about immigration enforcement from the Dallas Community Police Oversight Board, reasoning that it could be a violation of the Texas Open Meetings Act since such

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<sup>25</sup> Foxhall, *supra* note 16; Cromer, *supra* note 16.

<sup>26</sup> See Cole Sullivan, *New Dallas Police Chief Didn't Answer Questions About Immigration Policy, Ballooning Response Times During First-Day-on-Job Media Availabilities*, WFAA (Apr. 23, 2025), <https://perma.cc/2XNN-8ZR9>; Michael Lozano, *1-on-1 with New Dallas Police Chief Daniel Comeaux*, Spectrum News 1 (Apr. 25, 2025), <https://perma.cc/X6KJ-Z7U8>; Megan Cardona, *Dallas Police Oversight Board Prevented from Asking Chief Comeaux Policy Questions*, KERA News (June 10, 2025), <https://perma.cc/6DES-4R36>.

<sup>27</sup> Sullivan, *supra* note 26.

<sup>28</sup> Lozano, *supra* note 26.

questions were not specifically noted on the meeting agenda.<sup>29</sup>

### **B. Press Credential Restrictions**

Beyond the general restrictive effect of PIOs, independent journalists attempting to report on crime or police activity face specific and even greater information access constraints than their mainstream-media counterparts. Many, if not all, major metropolitan police departments have policies governing their employees' interactions with the media. Many of those policies make it expressly more difficult for independent journalists to access information.

For example, some policies restrict access to certain information or areas to “media representatives” or “members of the media” with “appropriate [or valid] press credentials.”<sup>30</sup> Other policies contain explicit directives for department employees to direct a person to its “Media Relations

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<sup>29</sup> Cardona, *supra* note 26.

<sup>30</sup> *E.g.*, Dall. Police Dep't, *Dallas Police Department General Orders*, No. 323.00 (Press Relations) (Jan. 30, 2007), <https://perma.cc/GJ4F-YX58>; Ft. Worth Police Dep't, *Fort Worth Police Department General Orders*, No. 212.00 (Public Relations) (June 16, 2025), [https://police.fortworthtexas.gov/files/assets/police/v1/public-information/documents/general-orders/general-orders\\_web-version-6\\_12\\_2025.pdf](https://police.fortworthtexas.gov/files/assets/police/v1/public-information/documents/general-orders/general-orders_web-version-6_12_2025.pdf); Aus. Police Dep't, *Austin Police Department General Orders*, No. 326 (News and Media Relations) (June 16, 2025), <https://www.austintexas.gov/sites/default/files/files/Police/General%20Orders/G.O.%206-20-25/113-APD-General-Orders-Issued-06-20-25.pdf>; Stockton Police Dep't, *Stockton Police Department Policy Manual*, Policy 323 (Media Relations) (Feb. 11, 2025), <https://perma.cc/2JKD-78LV>.

Unit” if the employee “is unsure if a person requesting information is in fact a representative of the media.”<sup>31</sup> Finally, certain police departments specifically exclude “[f]reelance” journalists from the category of media representatives who are provided with greater access to information or certain areas—such as crime scenes—and require that media representatives afforded such access be “directly employed by agencies of the electronic or print media.”<sup>32</sup>

Independent journalists that are unaffiliated with an established news organization are less likely to have access to the right “press credentials,” and thus face greater skepticism about their legitimacy, than do members of the establishment media. Often, therefore, these journalists do not even have access to

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<sup>31</sup> Hou. Police Dep’t, *Houston Police Department General Order No. 800-02 (Media Relations)* (Feb. 28, 2025), [https://www.houstontx.gov/police/general\\_orders/800/800-02%20Media%20Relations.pdf](https://www.houstontx.gov/police/general_orders/800/800-02%20Media%20Relations.pdf); Durham Police Dep’t, *Durham Police Department General Order No. 4060 R-4 (Media Relations)* (Oct. 12, 2015), <https://perma.cc/PU4N-WT4U>.

<sup>32</sup> Durham Police Dep’t, *supra* note 31; see also D.C. Police Dep’t, *District of Columbia Police Department General Order No. GO-SPT-204.01 (Media) 2* (Apr. 13, 2001), <https://go.mpdconline.com/GO/3196000.pdf> (defining “News Media Representatives” as “those individuals who are directly employed by agencies of the electronic, print or digital media \* \* \* .”); Reno Police Dep’t, *Reno Police Department General Order No. S-180-17 (Media Relations)* (Apr. 19, 2017), <https://perma.cc/LR8M-Y8DM> (defining “News Media Representative” as “individuals employed as reporters or photographers by and with identification from a local, national, or international news organization[]”).



the proverbial “front door” of government agencies, like police departments.

### **C. Public Records Process**

Without the ability to obtain fulsome information from eyewitnesses or government sources, the information available to independent journalists is often confined to what can be obtained from filing public records requests. But that process comes with problems of its own.

The often slow and administratively cumbersome process of requesting public records is at odds with the need to report information promptly to the community. For instance, when responding to requests for records in Texas under the Texas Public Information Act (“TPIA”), governmental bodies frequently stall by asking the requester to “clarify” their request, or to pay the costs of producing the information in advance. And if a governmental body claims that the information is excepted from disclosure, then both the request and the responsive information must be reviewed by the Open Records Division within the Texas Attorney General’s Office, which then issues a decision as to whether the governmental body may withhold the responsive information.<sup>33</sup>

This process can take more than three months and is likely to result in records being withheld, given the number and scope of exceptions written into the TPIA, and the Attorney General’s lack of fact-finding

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<sup>33</sup> Att’y Gen. of Tex., *Overview of the Public Information Act*, <https://perma.cc/BJJ4-5H2F> (last visited July 22, 2025).

authority.<sup>34</sup> To contest a ruling permitting the government to withhold the requested information requires the requestor to file a lawsuit against the governmental body, a process which could take years to resolve.<sup>35</sup> And even if the Attorney General’s Office orders the release of the records, the governmental body can file a lawsuit and it can take months for the requested information to be released.<sup>36</sup> The ability of inquiring parties to force compliance with the TPIA was further constricted by the Texas Supreme Court’s recent decision in *Paxton v. American Oversight*, which held that district courts cannot issue writs of mandamus requiring constitutional executive officers to disclose public records.<sup>37</sup>

Additionally, journalists requesting public records may encounter antagonism and paternalism from the

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<sup>34</sup> Steffensen & Leatherbury, *supra* note 21, at 610-614; see, e.g., Tex. Gov’t Code § 552.1085(c) (establishing confidentiality of sensitive crime scene images); Tex. Gov’t Code § 552.103 (excepting information from public disclosure that “relat[es] to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party”); Tex. Gov’t Code § 552.108(a)(1) (excepting from public disclosure any information held by law enforcement or a prosecutor that would “interfere with the detection, investigation, or prosecution of crime”).

<sup>35</sup> See Att’y Gen. of Tex., *What to Expect When You Receive an Open Records Letter Ruling*, <https://perma.cc/UU5X-UFA9> (last visited July 22, 2025).

<sup>36</sup> Caroline Love, *Getting Public Records Is Getting Harder in Texas. Collin County Is No Exception*, KERA News (Feb. 15, 2023), <https://perma.cc/P5GN-E3VE>.

<sup>37</sup> \_\_\_ S.W.3d \_\_\_, No. 24-0162, 2025 WL 1793117, at \*5-7 (Tex. June 27, 2025).

public records officers responsible for processing their requests, creating yet another hurdle to obtaining what should be public information necessary for their reporting.<sup>38</sup> Even when obtained promptly, public records often lack needed context that can be provided only through the perspectives of eyewitnesses and government employees.

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Faced with these bureaucratic obstacles, independent journalists attempting to use official channels of government communication are likely to experience delays in receiving information—or come up entirely empty-handed—leading to very real public harms. For example, agency officials might stonewall requests for information about a devastating school shooting,<sup>39</sup> or they could suspend disclosures surrounding the government’s response to a deadly flood,<sup>40</sup> or they could drag their feet in explaining a chemical spill that contaminates the drinking water of an entire community.<sup>41</sup>

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<sup>38</sup> See Brett G. Johnson, *Public Records Officers’ Perspectives on Transparency and Journalism*, 2 J. Civic Info. 1, 15-17 (2020).

<sup>39</sup> See *Uvalde Consol. Indep. Sch. Dist. v. Tex. Trib.*, \_\_ S.W.3d \_\_, No. 04-24-00509-CV, 2025 WL 1970278, at \*1 (Tex. App. July 16, 2025).

<sup>40</sup> See Mia Valdez, *Kerrville Officials Raise Concerns Over ‘Targeted Threats’ Amid Flood Scrutiny*, MySanAntonio.com (July 14, 2025), <https://www.mysanantonio.com/news/hill-country/article/texas-floods-kerrville-threats-20768886.php>.

<sup>41</sup> See Soc’y of Env’t Journalists, *SEJ Asks “Who’s in Charge?” at EPA* (Mar. 21, 2014), <https://perma.cc/96RR-B7XD>.

The Fifth Circuit en banc majority in this case downplayed the importance of journalists “getting a scoop” before information is widely known. *Villarreal v. City of Laredo*, 94 F.4th 374, 388 (5th Cir. 2024) (en banc). But especially in situations where time is of the essence, prompt journalistic efforts to shed light on agency activities are vital to the public interest and serve as a “check on the power of the government.” *Id.* at 399-400 (Graves, J., dissenting). It is therefore critical that journalists can go beyond the curated government narrative by seeking direct, unsupervised interactions with public employees.

Gag orders, PIOs, press credential restrictions, and cumbersome public records processes make this task difficult enough. But under the Fifth Circuit’s decision in this case, journalists must now fight the battle against censorship on two fronts. On one side, they must navigate policies creating increasingly impenetrable barriers to communication with government employees; on the other, they can face criminal penalties if they succeed in uncovering information that the government would prefer to hide. If the Fifth Circuit’s decision is allowed to stand, the outlook for the freedom of the press and freedom of information appears grim indeed. The public will be the real losers.

### **III. The threat of retribution shielded by the Fifth Circuit’s broad qualified immunity regime will chill a broad range of legitimate journalism.**

Journalists working to hold governments accountable are familiar with closed doors and empty

mailboxes. When official channels are closed off or slow to respond, journalists must develop alternative sources to perform their job—a public service indispensable to our democracy.<sup>42</sup> If using alternative sources exposes journalists to the risk of official retribution, journalists will become little more than conduits for government public relations copy.

The Laredo police department is not unique in its policy limiting the authority to release information to a small number of officials. Nor is Texas unique in having statutes that criminalize conduct tied to information gathering. What is unique is the propensity for those two factors—tightly controlled authority to disseminate public information and readily available, statutory prosecutorial pretexts—to cut off independent scrutiny of government conduct.

The risk to journalists of crossing the hazy boundaries of constitutionally indeterminate criminal statutes is bound to slow or stop a broad range of ordinary, legitimate journalistic activity. Independent journalists like Ms. Villarreal are especially vulnerable to this effect, given that they may lack the resources and institutional backing of a larger news outlet in the event that they are prosecuted. And the chilling effect will likely extend beyond borderline

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<sup>42</sup> See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 274 (1964) (noting the historical recognition that “the right of freely examining public characters and measures, and of free communication among the people thereon, \* \* \* [is] the only effectual guardian of every other right” (quoting 4 *Elliot’s Debates on the Federal Constitution* 553-554 (1876))).

cases. A police officer intent on shutting down unflattering portrayals of their conduct can find a close-enough statute to serve as a pretext for arrest. And under the Fifth Circuit’s rule, the full risk of unconstitutional enforcement is borne by the journalist,<sup>43</sup> even if the officer was motivated not by a duty to uphold the rule of law, but a desire to subvert it for convenient personal ends. Thus, the standard of conduct for journalists is decoupled from the guarantees of the First Amendment and fixed to the vagaries of power-wielding government workers.

To report or not to report? For Texas journalists and their colleagues across the country, the answer may turn on whether doing so will draw the ire of law enforcement. The resulting chill will extend to reporting not only on the immediate activities of police officers, but also a host of other issues of potential public significance. For example, the same Texas statute that was invoked to arrest Ms. Villarreal could also be used to throw journalists in jail for asking about:

- the names of applicants for a role as a school superintendent or a chief executive officer of a state university,<sup>44</sup>

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<sup>43</sup> See *Villarreal*, 94 F.4th at 407 (Willett, J., dissenting) (observing that, in the “upside-down world” envisioned by the Fifth Circuit’s decision, “everyday citizens are demanded to know the law’s every jot and tittle, but those charged with *enforcing* the law are only expected to know the ‘clearly established’ ones”).

<sup>44</sup> See Tex. Gov’t Code §§ 552.123, 552.126; Tex. Penal Code § 39.06(c)-(d) (criminalizing the solicitation or receipt of information that “is prohibited from disclosure under Chapter 552” of

- a supplier that the state uses to obtain chemicals for executions by lethal injection,<sup>45</sup>
- a grievance filed by a prison inmate for abuse by corrections staff,<sup>46</sup> or
- the civil commitment of a sexually violent predator.<sup>47</sup>

Indeed, given that section 39.06(c) of the Texas Penal Code prohibits, in addition to solicitation, *receipt* of nonpublic information, journalists could conceivably be held criminally liable for publishing a tip left in their voicemail by a public official on any of these subjects.

Even some of the most mundane newsgathering could conceivably be illegal under section 39.06(c). Journalists reporting on an active investigation of public corruption allegations at city hall might now think twice before calling city staff or even elected councilmembers for comment on—or even to confirm the existence of—the investigation.<sup>48</sup> They might also start declining invitations to official press conferences, lest they ask the wrong question and get cuffed for solicitation of nonpublic information. After

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the Texas Government Code); see also *State v. Ford*, 179 S.W.3d 117, 123 (Tex. App. 2005) (construing the phrase “prohibited from disclosure” as referring to “the set of exceptions to disclosure listed in” Chapter 552, Subchapter C).

<sup>45</sup> See Tex. Gov’t Code § 552.1081(2).

<sup>46</sup> See *id.* § 552.134(a).

<sup>47</sup> See *id.* § 552.1345.

<sup>48</sup> See *id.* § 552.108.

all, there is no clear reason why the Fifth Circuit's decision would be any different had Ms. Villarreal engaged in her allegedly criminal questioning at a public press conference instead of in a private phone call.

At the very least, Texas journalists will want to become familiar with the seventy-six subsections of the Texas Public Information Act that enumerate the Act's exceptions,<sup>49</sup> and the countless other statutes in Texas that make certain information confidential.

Under the Fifth Circuit's decision, governments are not limited to regulating the information that they disseminate to the public; they can also criminalize efforts to obtain information through unsanctioned channels. Indeed, section 39.06(c) could be read broadly to criminalize the solicitation of most information from unsanctioned government sources—i.e., anyone outside of a designated public information office. Any uncertainty about the scope of criminal statutes governing the release, receipt, or publication of government information can be wielded—as Respondents did here—to retaliate against disfavored journalists.

The Fifth Circuit's formulation of the qualified immunity doctrine transforms the public information officer into a leviathan, casting a cloud over any free speech protection that threatens its agenda. Independent journalists, lacking the legal and financial resources of large media organizations, are exposed to the full force of governmental retribution.

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<sup>49</sup> See *id.* §§ 552.101-552.163.



**CONCLUSION**

For the reasons explained herein, the petition for certiorari should be granted, and the Fifth Circuit's judgment should be reversed.

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