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

# BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 24 NEWS ORGANIZATIONS IN SUPPORT OF PETITIONER


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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Other Authorities**

## INTEREST OF AMICI CURIAE[1]

Amici are the Reporters Committee for Freedom of the Press ("Reporters Committee"), American Broadcasting Companies, Inc., The Atlantic Monthly Group LLC, Boston Globe Media Partners, LLC, BuzzFeed, The Center for Investigative Reporting (d/b/a Reveal), Courthouse News Service, Dow Jones & Company, Inc., Forbes Media LLC, Freedom of Information Foundation of Texas, Gannett Co., Inc., Hearst Corporation, The McClatchy Company, LLC, MediaNews Group Inc., National Press Club Journalism Institute, National Public Radio, Inc., The New York Times Company, Newsday LLC, The Press Freedom Center at the National Press Club, Pro Publica, Inc., The Seattle Times Company, Slate, TIME USA, LLC, Vox Media, LLC, and The Washington Post.

As organizations that exercise and defend the rights of journalists and news organizations, amici have a strong interest in defending one of the First Amendment's most basic guarantees: the right to ask questions of government officials.

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[1] Pursuant to Supreme Court Rule 37, counsel for amici curiae state that no party's counsel authored this brief in whole or in part; no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief; no person other than the amici curiae, their members or their counsel made a monetary contribution intended to fund the preparation or submission of this brief; and counsel of record for all parties were given timely notice of the intent to file this brief.

## SUMMARY OF THE ARGUMENT

Under the First Amendment, "[t]he press was protected so that it could bare the secrets of government and inform the people." *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring). The Constitution therefore protects not just the right to speak but also the right "to inquire," *Citizens United v. FEC*, 558 U.S. 310, 339 (2010), including through "routine newspaper reporting techniques," *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979). And no technique has been more routine or central to newsgathering—from the Founding through the present day—than pursuing information about government affairs "simply by asking" for it. *Id.* at 99. The very first treaty adopted under the Constitution was obtained by the press from Senators who were forbidden by law to disclose it, and the journalism of the last two-and-a-half centuries would be unrecognizable without the right to seek answers from public officials. *See* Richard B. Kielbowicz, *The Role of News Leaks in Governance and the Law of Journalists' Confidentiality, 1795-2005*, 43 San Diego L. Rev. 425, 433 n.28 (2006) (citing 1 S. Exec. J. 178 (4th Cong., Spec. Sess. (1795)).

Last year, in an extraordinary departure from those bedrock First Amendment principles, the *en banc* U.S. Court of Appeals for the Fifth Circuit—over the dissents of Judges Douglas, Elrod, Graves, Higginson, Ho, Oldham, and Willett, *see* Pet. App. 64a–122a—held that a reasonable law enforcement official might believe they were entitled to jail a reporter who "solicits or receives from a public servant

information that . . . has not been made public" with the "intent to obtain a benefit," Pet. App. 34a. (quoting Tex. Penal Code § 39.06(c)), where the benefit in question was "getting a scoop," Pet. App. 40a. And after this Court granted certiorari, vacated, and remanded that decision, Pet. App. 22a, the Fifth Circuit simply "reinstate[d] what [it] mistakenly said before, just in different packaging," Pet. App. 21a (Higginson, J., dissenting), again concluding that "'every reasonable officer' could have believed that what he or she was doing was perfectly legal" here, Pet. App. 3a (majority opinion).

That was error. The supposed 'offense' for which Petitioner was punished describes the work of every journalist; it would "dam the flow to the press, and through it to the people, of the most valuable sort of information" about their government—"not the press release, not the handout, but the firsthand story based on the candid talk of a primary news source." Alexander M. Bickel, The Morality of Consent 84 (1975). And while the ruling's chilling effect on reporters across Texas, Louisiana, and Mississippi alone warrants this Court's review, the Fifth Circuit's decision is also characteristic of a broader dysfunction in the way lower courts approach the question of qualified immunity when the right to gather news is at stake.

Amici therefore offer two arguments in support of this Court's review and reversal. First, no right is more fundamental to the practice of journalism than the one the Fifth Circuit still declines to recognize: the right to ask public officials for information. "[T]he First Amendment goes beyond protection of the press

and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw," *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 783 (1978), and "there is practically universal agreement" that those constitutional safeguards exist "to protect the free discussion of governmental affairs" in particular, *Mills v. Alabama*, 384 U.S. 214, 218–19 (1966). No surprise, then, that this Court's cases—along with the overwhelming weight of persuasive authority from lower courts—leave no doubt that the First Amendment protects asking questions of a source. *See Daily Mail Publ'g Co.*, 443 U.S. at 99. In light of the "paramount public interest in a free flow of information to the people concerning public officials, their servants," *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964), the force of that rule is all the more obvious, where, as here, that source is a government employee, *see Daily Mail Publ'g Co.*, 443 U.S. at 99 (reporter lawfully obtained information by interviewing "police" and "assistant prosecuting attorney"). The Fifth Circuit's error on the issue is clear enough that summary reversal is appropriate. *See Taylor v. Riojas*, 592 U.S. 7, 8–9 (2020) (per curiam) (summarily reversing Fifth Circuit's grant of qualified immunity for an "obvious" constitutional violation (citation omitted)); *McCoy v. Alamu*, 141 S. Ct. 1364, 1364 (2021) (mem.) (same).

Plenary review is likewise warranted because the courts of appeals are in clear need of guidance about the proper approach to qualified immunity when the right to gather information—as opposed to the right to speak or publish—is at issue. This Court has always extended the rights "to inquire, to hear, to

speak, and to use information" the same degree of protection, *Citizens United*, 558 U.S. at 339, and courts need only apply ordinary First Amendment standards to adequately protect the right to gather the news, *see Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952) (noting that "the basic principles of freedom of speech and the press . . . do not vary"). Yet the circuits have struggled to discern "a clearly defined framework" for cases that involve information-gathering rather than expression, *S.H.A.R.K. v. Metro Parks Serving Summit Cnty.*, 499 F.3d 553, 560 (6th Cir. 2007), leaving "routine newspaper reporting techniques" vulnerable to official retaliation that no court would tolerate if any other First Amendment activity were at issue, *Daily Mail Publ'g Co.*, 443 U.S. at 103.

The gravity of the Fifth Circuit's repeated error, together with the impact that this broader disarray continues to have on the exercise of fundamental First Amendment rights, warrants review. As this Court underlined in *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), it would be "intolerable" to defer resolution of "an important question of freedom of the press" where, as here, "an uneasy and unsettled constitutional posture . . . could only further harm the operation of a free press," *id.* at 247 n.6. This Court should grant the Petition to clear away that chilling uncertainty and to reaffirm the fundamental proposition that "[a] free press cannot be made to rely solely upon the sufferance of government to supply it with information." *Daily Mail Publ'g Co.*, 443 U.S. at 104.

## ARGUMENT

### I. The Constitution's most basic guarantee of a free press is the right to ask questions of government officials.

Petitioner Priscilla Villarreal was arrested and detained for "reporting nonpublic information from [a] backchannel source": a law enforcement officer who accurately corroborated the details of a recent suicide and a traffic accident. Pet. App. 25a. Remarkably, a slim majority of the Fifth Circuit held that "[n]o case would have given these officers 'fair notice' that their conduct in arresting Villarreal would run afoul of the First Amendment," Pet. App. 60a, and adhered to that conclusion even after this Court vacated and remanded the original decision, *see* Pet. App. 3a; Pet. App. 21a (Higginson, J., dissenting). That was an obvious constitutional error, one that places the daily work of journalists throughout Texas, Mississippi, and Louisiana in legal jeopardy. The First Amendment protects asking sources for information they may not be authorized to share—the bread-and-butter of newsgathering, and perhaps the single most "routine newspaper reporting technique[]" in a reporter's toolkit. *Daily Mail Publ'g Co.*, 443 U.S. at 103. That right unquestionably includes soliciting information from government officials in particular, *see id.*; if anything, it has special force on that footing because "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison*, 379 U.S. at 74–75. The original meaning of the First Amendment, this Court's precedent interpreting it, and the overwhelming weight of persuasive authority would have made that point

clear to any reasonable officer confronted with these facts.

To begin with, Petitioner's rights are clearly established by the First Amendment "as originally understood." *Citizens United*, 558 U.S. at 353. Villarreal is far from the first journalist to ask an individual to share information he or she may have promised to keep confidential. On the contrary, the clash over the Sedition Act of 1798 that "first crystallized a national awareness of the central meaning of the First Amendment," *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 273 (1964), was as much a referendum on the "role of leaks" in reporting about the government as it was a conflict over the right to criticize the government, Daniel N. Hoffman, Governmental Secrecy and the Founding Fathers 200 (1981). There could have been no heated national debate over the terms of Jay's Treaty, for instance, if the Jeffersonian-Republican *Aurora* had not first sought and obtained a copy from Senators who were forbidden to disclose it. *See* Kielbowicz, *supra*, at 433–34. But as heatedly as the Federalists denounced the newspaper over the incident, "no move was made to punish" the journalists involved, "nor is there any record of a discussion of such a possibility in either the Cabinet or the Senate." Daniel N. Hoffman, *Contempt of the United States: The Political Crime That Wasn't*, 25 Am. J. L. Hist. 343, 349 (1981). Indeed, even the Sedition Act's proponents stopped short of attempting to criminalize what the Fifth Circuit believes Texas may criminalize: asking for confidential information held by government. *See id.* at 356; Sedition Act of 1798, 1 Stat. 596.

The same line appears in any number of other Founding-era controversies sparked by reporters obtaining confidential information: Even in "the heyday of libel trials," the prospect of prosecuting a reporter for soliciting and publishing truthful information about the government was beyond the constitutional pale. Hoffman, Governmental Secrecy, *supra*, at 203 (collecting prominent examples of unauthorized disclosure that went unpunished). And when the reigning Federalists *did* cross that line a few years after the Jay's Treaty incident—attempting to punish the *Aurora*'s editor for obtaining draft election legislation in violation of the Senate's rules—a grand jury refused to indict, a decision that Thomas Jefferson suggested was compelled by the constitutional freedom of the press. *See* Matthew Schafer, *That Time the Senate Issued an Arrest Warrant for a Reporter*, Lessons in History (June 27, 2021), https://perma.cc/TD47-9ZPG. If the Sedition Act itself has been struck down "in the court of history," *Sullivan*, 376 U.S. at 276, the same Founding debates make just as clear—if not clearer—that the Constitution forbids criminalizing the press for asking for government information, even where the state might prefer to keep its secrets.

Precedent makes the same point. This Court has affirmed again and again that the First Amendment provides virtually absolute protection for the publication of lawfully acquired, truthful information on matters of public concern, even where its initial disclosure to a journalist was unauthorized. *See N.Y. Times Co.*, 403 U.S. at 714 (classified information); *Florida Star v. B.J.F.*, 491 U.S. 524, 534 (1989) (name of sexual assault victim); *Bartnicki v.*

*Vopper*, 532 U.S. 514, 534–35 (2001) (illegally intercepted communications). And in *Smith v. Daily Mail Publishing Co.*, this Court expressly articulated the principle that should have decided this case: Information is necessarily "lawfully obtained" if it was gathered in reliance on "routine newspaper reporting techniques." 443 U.S. at 103–104.

In that case, the press had obtained the name of a juvenile offender "simply by asking various witnesses, the police, and an assistant prosecuting attorney." *Id.* at 99. In defense of its decision to prosecute the subsequent publication of the name, West Virginia urged the position the Fifth Circuit adopted here: that the juvenile offender's name was not "gotten by lawful means" because it was not obtained "from any public record or hearing . . . or with the State's approval." Pet'rs' Br. at *11, *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97 (1979) (No. 78-482), 1978 WL 223067; *compare* Pet. App. 39a (faulting Petitioner because she could have "await[ed] an official LPD report" or followed Texas "open records procedures"). But this Court decisively rejected that argument, holding that the information was "lawfully obtained" through interviews and that "[a] free press cannot be made to rely solely upon the sufferance of government to supply it with information." *Daily Mail Publ'g Co.*, 443 U.S. at 104. A citation to *Daily Mail* would therefore suffice to resolve this case. This Court need not say anything new to reiterate that "routine newspaper reporting techniques"—including, and especially, soliciting nonpublic information from a government source—are protected by the First Amendment. *Id.* at 103.

If *Daily Mail* were not authority enough, though, a raft of state and federal courts have likewise applied the rule of *Daily Mail* to a full range of reporting that relies on the "traditional function of a free press in seeking out information by asking questions." *Nicholson v. McClatchy Newspapers*, 177 Cal. App. 3d 509, 519 (1986). The core of that work is "bar[ing] the secrets of government" in particular, *N.Y. Times Co.*, 403 U.S. at 717 (Black, J., concurring), and it should go without saying that enormously consequential reporting about the operations of government has turned on information solicited from sources who violated the law to share it, from the Pentagon Papers to the break-in that exposed COINTELPRO. *See* Betty Medsger, *Remembering an Earlier Time When a Theft Unmasked Government Surveillance*, Wash. Post (Jan. 10, 2014), https://perma.cc/T85B-3UT6. To protect just that kind of reporting, lower courts have squarely held that "[j]ournalists are allowed to request"—not just sit idly waiting to receive—"documents that have been stolen." *Democratic Nat'l Comm. v. Russian Fed'n*, 392 F. Supp. 3d 410, 436 (S.D.N.Y. 2019); *see also Allen v. Beirich*, No. CCB-18-3781, 2019 WL 5962676, at *7 n.11 (D. Md. Nov. 13, 2019), *aff'd in part, rev'd in part on other grounds*, No. 19-2419, 2021 WL 2911736 (4th Cir. July 12, 2021) (same). Otherwise, some of the most important reporting on public affairs in the nation's history would have been unlawful.

While Petitioner's case—which like *Daily Mail* itself involves a government source—falls in the heartland of the right to solicit information directly relevant to the functions of public officials, the clarity of the principle is only underlined by the weight of

authority extending the same rule to other routine reporting contexts. Without the First Amendment right to ask questions of sources who may not be authorized to share what they know, the threat of crushing liability[2] would likewise foreclose reporting on, for instance, any industry fenced off by nondisclosure arrangements. *See* Bill Carter, *Tobacco Company Sues Former Executive Over CBS Interview*, N.Y. Times (Nov. 22, 1995), https://perma.cc/JA4F-DGQ4 (press reported health risks of smoking by interviewing source in violation of nondisclosure agreement); John Carreyrou, *Theranos Whistleblower Shook the Company—and His Family*, Wall St. J. (Nov. 18, 2016), https://perma.cc/LST9-NP7J (press reported medical fraud by interviewing source in violation of nondisclosure agreement); *see* Ronan Farrow, *Harvey Weinstein's Secret Settlements*, New Yorker (Nov. 21, 2017), https://perma.cc/J96Z-DNDX (press reported sexual harassment by interviewing source in violation of nondisclosure agreement). By the Fifth Circuit's lights, all of that reporting might have been unprotected by the First Amendment. Thankfully, every other court to consider the issue disagrees. *See Trump v. Trump*, 79 Misc. 3d. 866, 882 (N.Y. Sup. Ct. N.Y. Cnty. 2023) (failing to find "a single case where any court, whether state or federal, has held that a reporter is liable for inducing his or her source to breach a confidentiality provision").

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[2] This Court has often noted that whether a prohibition on protected speech or newsgathering "be civil or criminal, it must satisfy relevant constitutional standards." *Garrison*, 379 U.S. at 67; *see also Counterman v. Colorado*, 600 U.S. 66, 76 (2023). Precedent refusing to impose civil liability on the press for soliciting information should therefore likewise have provided warning that Texas cannot criminalize that newsgathering.

Courts have likewise found a First Amendment right to ask questions of jurors, for instance, which underpins reporting on the criminal justice system, *see In re Express-News Corp.*, 695 F.2d 807, 808–09 (5th Cir. 1982); *United States v. Sherman*, 581 F.2d 1358, 1361 (9th Cir. 1978), or to ask questions of voters, which drives essential political journalism, *see Daily Herald Co. v. Munro*, 838 F.2d 380, 384 (9th Cir. 1988) (exit polling protected by the First Amendment); *ABC, Inc. v. Wells*, 669 F. Supp. 2d 483, 487 (D.N.J. 2009) (same); *CBS Inc. v. Smith*, 681 F. Supp. 794, 802 (S.D. Fla. 1988) (same). The list could go on. The point, though, is that while the facts of the cases are as diverse as the news itself, each authority straightforwardly applies the holding of *Daily Mail*: The First Amendment protects journalists' right to obtain information "simply by asking," 443 U.S. at 99, including—and especially—to "bare the secrets of government" in particular, *N.Y. Times Co.*, 403 U.S. at 717 (Black, J., concurring). That rule is perhaps the Constitution's most basic First Amendment guarantee. In denying it, the Fifth Circuit's decision stands alone.

## II. In the lower courts, qualified immunity systematically undermines the Constitution's safeguards for a free press.

Because it exposes journalists in Texas, Louisiana, and Mississippi to the risk of arrest for carrying out their daily work, the Fifth Circuit's legal error warrants review on its own terms. Underlining the case for this Court's consideration, the Fifth Circuit's analysis is also symptomatic of a deeper

dysfunction that requires this Court's correction: Lower courts have struggled to apply ordinary First Amendment standards when the right to gather the news—as opposed to the right to speak or publish—is at stake, laboring under the misconception that this Court has supplied no "clearly defined framework" for such cases. *See S.H.A.R.K.*, 499 F.3d at 560. The consequences are especially grave in the context of qualified immunity, where confusion has given some public officials a free hand to retaliate against newsgathering even though comparable efforts to punish speech or publication would be patently unlawful.

In principle, the appropriate analysis in newsgathering cases should be straightforward. "[R]outine newspaper reporting techniques" are entitled to the same degree of constitutional protection as any other First Amendment activity, *Daily Mail Publ'g Co.*, 443 U.S. at 103, subject to reasonable time, place, and manner restrictions but not to whim, caprice, animus, or deliberate censorship, *see, e.g.*, *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 276–77 (S.D.N.Y. 2019) (clearly established that "content-based restrictions on newsgathering" are subject to strict scrutiny (citation and internal quotation marks omitted)); *Gericke v. Begin*, 753 F.3d 1, 9 (1st Cir. 2014) (clearly established that time, place, and manner restrictions on newsgathering are subject to intermediate scrutiny); *Quraishi v. St. Charles Cnty.*, 986 F.3d 831, 839 (8th Cir. 2021) (clearly established that retaliation against newsgathering violates the First Amendment). Those straightforward rules flow from this Court's guidance that "the basic principles of freedom of speech and the

press, like the First Amendment's command, do not vary." *Joseph Burstyn, Inc.*, 343 U.S. at 503. While "[l]aws enacted to control or suppress speech may operate at different points in the speech process," *Citizens United*, 558 U.S. at 336, it "makes no difference" to the constitutional analysis whether the government's heavy hand intervenes when information is first gathered or when it is distributed to an audience, *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 792 n.1 (2011).

That it should be easy to apply those unwavering rules is well-illustrated by *Quraishi v. St. Charles County*, a recent decision from the Eighth Circuit. There, a deputy of the St. Charles County police department argued that he was entitled to immunity for allegedly "deploying a tear-gas canister at law-abiding reporters" because no previous case addressed retaliation against reporters in particular. *Quraishi*, 986 F.3d at 839. The panel candidly acknowledged that the circuit did not have on-point precedent "where reporters are arrested while peacefully filming a protest." *Id.* at 838. But that was irrelevant, as the court noted, because the "right to exercise First Amendment freedoms without facing retaliation from government officials is clearly established," *id.* (citation omitted), and "[r]eporting is a First Amendment activity," *id.* (citing *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972)). Axiomatically, then, police can no more punish reporters for their reporting than they could the publisher for printing it. The "brevity of the First Amendment discussion" required to settle the question makes clear the answer would be "virtually self-evident" to any reasonable official. *Glik v. Cunniffe*, 655 F.3d 78, 85 (1st Cir. 2011).

But as the Fifth Circuit's decision below illustrates, lower courts have introduced bizarre complications into the analysis, expressing doubt whether the most ordinary exercises of the right to gather the news come within the First Amendment's protection at all. Much as the Fifth Circuit convinced itself to gainsay the right to ask questions of public officials, for instance, a different panel of the Eighth Circuit recently expressed uncertainty whether law enforcement officers can retaliate against those who merely look at them. *See Molina v. City of St. Louis*, 59 F.4th 334, 340 (8th Cir. 2023); *see also Molina v. City of St. Louis*, 65 F.4th 994, 994 (8th Cir. 2023) (mem.) (Colloton, J., dissenting from denial of rehearing *en banc*) (noting that the panel's decision would allow police to enforce a statute reading "[i]t shall be unlawful for any person to watch police-citizen interactions"). To similar effect, while it is difficult to imagine a court concluding that the right to criticize firefighters is different in scope than the right to criticize the police, *see City of Houston v. Hill*, 482 U.S. 451, 461 (1987), lower courts have managed to persuade themselves that a reasonable officer might think the right to gather news admits of such distinctions, *see Crocker v. Beatty*, 995 F.3d 1232, 1243 n.8 (11th Cir. 2021).

These decisions are just a small sample of the ways in which lower courts' confusion has failed to protect the newsgathering right. And the lack of a meaningful remedy when that right is violated has serious consequences for working journalists. As is often true of First Amendment freedoms, the right to gather news—while "supremely precious"—is also

"delicate and vulnerable." *NAACP v. Button*, 371 U.S. 415, 433 (1963). A retaliatory arrest or prosecution has an "immediate and irreversible" impact on the right to gather news, not unlike a classic prior restraint; it stands to reason that information never gathered in the first instance because official retaliation derailed a line of reporting is beyond recovery. *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). To put it bluntly, if an official's goal is to muzzle the press, retaliation is attractive because it often works. The right to gather news depends, then, on an adequate deterrent to such abuses—a deterrent that qualified immunity too often defangs.

The predictable result is to provide a safe harbor for officials who would happily criminalize ordinary acts of journalism. Consider stark examples from the last several years alone. In Illinois, the *Daily Southtown*'s Hank Sanders—like Petitioner—was accused of violating local law by "asking public employees for comment." Dana Kennedy, *Chicago-Area Reporter Ticketed – for Asking Public Employees Questions*, N.Y. Post (Nov. 4, 2023), https://perma.cc/8VMU-K974. In Arizona and California, journalists have been intimidated for politely and professionally knocking on public officials' doors. *See* Laurie Roberts, *Sen. Wendy Rogers Runs to Court to Avoid a Reporter Armed with . . . Questions*, Ariz. Republic (Apr. 21, 2023), https://perma.cc/QQ85-9UE4; Kevin Rector, *Outrage Over Times' Journalism Exposes LAPD's Ignorance of a Free Press, Experts Say*, L.A. Times (July 14, 2023), https://perma.cc/GDJ2-CF95. And in Kansas, the newsroom of the *Marion County Record* was raided by police because its reporters had visited a publicly

accessible government webpage. *See* Bruce D. Brown & Gabe Rottman, *Claiming a 'Computer Crime' Shouldn't Give Police a Free Pass to Raid Newspapers*, L.A. Times (Aug. 31, 2023), https://perma.cc/F8DS-Z9AP. In these and too many other jurisdictions, the most basic exercises of the freedom of the press remain under legal threat.

This Court should intervene to ensure those abuses go no further. In this case, the Fifth Circuit lost sight of the core First Amendment principle that "[a] free press cannot be made to rely solely upon the sufferance of government to supply it with information." *Daily Mail Publ'g Co.*, 443 U.S. at 104. If left in place, the decision below will chill the core press function of seeking information about the operations of government—while emboldening those officials who would seek to stop that work. That result has no foothold in the Constitution's meaning or this Court's precedent. This Court should grant the petition and reverse.

## CONCLUSION

For the foregoing reasons, amici respectfully urge the Court to grant Petitioner's writ of certiorari.

Respectfully submitted,

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August 8, 2025