

No. _____

IN THE
Supreme Court of the United States

FRED RAHDAR AND KOBRA GHORBANI,
Petitioners,

v.

CITY OF FRIENDSWOOD, a municipality, ROBERT
WIENERS, MILLING, B., DEMENT, J., AND KULHANEK,
M.A., in their individual and official capacities,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

After the Friendswood officials tried to shut down his lawfully opened restaurant during the COVID-19 pandemic, Petitioner Fred Rahdar publicly criticized the chief of police with a billboard labeling him as a bully and created a website and public petition calling for his removal. In response, Defendants designed and executed a multi-year retaliation campaign against Petitioners, which included harassment, surveillance, multiple arrests, complaints to the Texas Alcoholic Beverage Commission, daily bar checks for his restaurant, highly irregular arrest procedures, and a fifth arrest for a nonviolent misdemeanor based on a statute that has never before (or since) been used to charge someone for the same or similar conduct.

The question presented is:

1. Whether the opinion in *Gonzalez v. Trevino*, 144 S. Ct. 1663 (2024), authorizes the use of any objective evidence to defeat probable cause.

PARTIES TO THE PROCEEDING

Fred Rahdar, Petitioner
Kobra Ghorbani, Petitioner
City of Friendswood, Respondent
Robert Wieners, Respondent
B. Milling, Respondent,
J. Dement, Respondent
M.A. Kulhanek, Respondent

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the United States District Court for the Southern District of Texas and the United States Court of Appeals for the Fifth Circuit:

- *Rahdar, et al v. City of Friendswood, et al*, No. 3:22-CV-00280, 2025 WL 918539 (S.D. Tex. Mar. 14, 2025) (memorandum and recommendation).
- *Rahdar v. City of Friendswood*, No. 25-40302, 2026 WL 766261 (5th Cir. Mar. 18, 2026) (Unpublished Opinion)

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PETITION FOR WRIT OF CERTIORARI

Petitioners Fred Rahdar and Kobra Ghorbani respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth's Circuit's unpublished opinion is reported at 2026 WL 766261 (5th Cir. Mar. 18, 2026). Pet. App. _____. The district court's memorandum and recommendation granting summary judgment is reported at 2025 WL 918539 (S.D. Tex. Mar. 14, 2025). Pet. App. 1a.

JURISDICTION

The Fifth Circuit denied Petitioners' Petition for Rehearing En Banc on April 14, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourth Amendment provides:

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

INTRODUCTION

Petitioner Fred Rahdar (“Mr. Rahdar”) chose to keep his Friendswood, Texas family run restaurant business lawfully open during COVID-19 so that he could pay his wife’s breast cancer medical bills. Mr. Rahdar and his wife Kobra Ghorbani (“Mrs. Ghorbani”) have owned and operated Friends Pub for sixteen years. However, Mr. Rahdar provoked the ire of former Friendswood Police Department (“FPD”) Police Chief Robert Wieners (“Chief Wieners”) when Mr. Rahdar began speaking out about the encounters he had had with FPD. Mr. Rahdar put up a billboard which accused Chief Wieners of being a bully and called for his removal. Mr. Rahdar also created a website and a petition asking for the removal of Chief Wieners and requested community members to sign the petition.

Once Mr. Rahdar took his complaints public, Chief Wieners conspired with his commanding officers to begin a multi-year campaign of retaliation, targeting, harassment and surveillance against Mr. Rahdar and Friends Pub.

Mr. Rahdar – who, prior to 2020, had never been arrested – was arrested on five separate occasions between June of 2020 and February 5, 2021 by FPD Officers. On February 5, 2021, Mr. Rahdar was arrested for violating T.P.C. § 42.03 or Obstructing a Passageway. However, in reality, Mr. Rahdar noticed that Defendant Cordero had been parked in front of Friends Pub for almost forty-five minutes, surveilling Mr. Rahdar's business. Since Mr. Rahdar had begun publicly criticizing Chief Wieners, surveillance had become the norm. The frequent surveillance became noticeable due to the length of time FPD Officers would sit parked in the Friends Pub parking lot, which averaged 30-45 minutes. FPD would even post an officer in the Friends Pub parking lot who would watch customers leaving Friends Pub. The officer would then communicate to other FPD Officers who were stationed roughly a mile down the road and who would pull over the customers leaving Friends Pub.

While Defendant Cordero was parked, Mr. Rahdar walked over to Defendant Cordero's driver side window and asked him to roll his window down. Due to the length of time Defendant Cordero was in the parking lot, Mr. Rahdar wanted to ask him what he was doing and whether Defendant Cordero was surveilling his business. However, Defendant Cordero kept his windows closed, refused to speak to Mr. Rahdar, and even began filming Mr. Rahdar.

After Defendant Cordero refused to speak with Mr. Rahdar, Mr. Rahdar walked away. However,

because Mr. Rahdar was leaving for the day, he did not see Defendant Cordero exit his vehicle. When Mr. Rahdar drove around to the parking lot, he noticed Defendant Cordero was no longer in his vehicle. He decided to stop his truck in front of Defendant Cordero's unoccupied police vehicle and wait in his truck. Mr. Rahdar wanted to inquire about why Defendant Cordero had been surveilling the Friends Pub parking lot for forty-five minutes. However, while Mr. Rahdar waited, he became distracted by his phone. Defendant Cordero, who realized that this was his opportunity to "get Fred," took advantage of this "gotcha" moment and snuck back into his vehicle and announced via his police radio that he needed back-up.

Since 2020, when Mr. Rahdar began speaking critically against FPD, Chief Wieners, and the Mayor of Friendswood, TX, Mr. Rahdar and Friends Pub were targeted through parking lot surveillance, complaints to TABC, surveillance of Mr. Rahdar and his wife's vehicles for traffic stops, bar checks which many times occurred up to three times a day, surveillance of Friends Pub customers leaving the parking lot and pulling them over at DUI check points one mile down the road, and multiple arrests ("Targeting Campaign").

It is not hard to imagine how many unknowing crimes the average person commits each day. Indeed, "[t]here are countless situations in which 'officers have probable cause to make arrests, but typically exercise their discretion not to do so.' " As a result, there's a meaningful " 'risk that some police officers

may exploit the arrest power as a means of suppressing speech.’” For multiple years, Mr. Rahdar was caught in FPD’s crosshairs, where he was subjected to a daily barrage of scrutiny from law enforcement as he would “...go[] to work, come[] home, [and] take[s] care of personal and family obligations...”

“[T]here’s zero difficulty or complexity in figuring out whether it was animus or [Mr. Rahdar’s] purportedly criminal conduct that caused [his] arrest.” Indeed, each time Mr. Rahdar would publicly disparage Chief Wieners an FPD through petitions, billboards, media interviews, websites, and social media, the Targeting Campaign would escalate. Appellees continued (and continue) to target Mr. Rahdar even after he exercised his constitutional right to petition the courts.

“In *Nieves*, the Supreme Court announced a two-part rule,” *Gonzalez v. Trevino*, 42 F.4th 487, 502 (5th Cir. 2022) (Oldham, J, dissenting) where probable cause is just one prong of a two-prong analysis. *Id.* Pursuant to the *Nieves* exception, probable cause will not defeat the retaliatory arrest claim, in “circumstances where officers have probable cause to make arrests, but typically exercise their discretion not to do so.” *Nieves v. Bartlett*, 139 S. Ct. 1715 (2019). Indeed, the entire purpose of the *Nieves* exception is that probable cause exists.

Here, the Panel generally affirmed the improper application of the *Nieves* exception where evidence of probable cause was assigned extra weight

and used to bridle the plethora of objective evidence put forth. Pet. App. 1a. Fundamentally however, by affirming the improper application of the *Nieves* exception to Mr. Rahdar, the panel turned a blind eye on “the unabashedly selective behavior of the law enforcement officers here,” who “weaponized the justice system to punish their [] opponent[.]” *Villareal v. City of Laredo*, 44 F.4th 363, 382 (5th Cir. 2022) (Ho, J., concurring). In the process, the panel split from the Eighth Circuit, where, and pursuant to *Nieves* and *Gonzalez*, the court allowed police officer statements regarding whether they would have arrested plaintiff to bolster the objective evidence; however, here, the officer testimony was dismissed. Pet. App 1a; *Murphy v. Schmitt*, 143 F.4th 914 (2025). Finally, because appellees in this case “disapprove[d] of Mr. Rahdar’s message, they “use[d] every means at [their] disposal to stop [him] from saying it.” *Id.* (internal citation omitted). This Court should not countenance such a dangerous mechanism to override First Amendment protections. It should grant this petition for rehearing en banc and review the panel’s decision.

STATEMENT OF THE CASE

A. *Gonzalez* authorizes the use of any objective evidence to defeat probable cause.

Mr. Rahdar put forth sufficient objective evidence that “he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been.” *Nieves* at 407. Even without the “virtually identical and

identical comparator[],” *Gonzalez v. Trevino*, 602 U.S. 653, 658 (2024), evidence regarding Jazmine Lowery (“Mrs. Lowery”), the panel’s decision that the *Nieves* exception did not apply, abjures *Gonzalez* and takes this Court back to the pre-*Gonzalez* interpretation, *Gonzalez v. Trevino*, 42 F.4th 487, 502 (5th Cir. 2022), of objective evidence which was rejected by the Supreme Court.

1. *Gonzalez* broadened the “overly cramped” view of *Nieves*

“It is not difficult to imagine different forms of [objective] evidence that might be used . . .”, *Gonzalez v. Trevino*, 21-50276, On Petition for Rehearing En Banc at pg. 8 (Ho, J., dissenting from denial of rehearing en banc) (February 22, 2023), to prove that one person was arrested because of retaliatory animus when “otherwise similarly situated individuals not engaged in the same sort or protected speech had not been.” *Nieves*, 139 S. Ct. at 1727; *Gonzalez v. Trevino*, 144 S. Ct. 1663, 1667 (2024). However, the Fifth Circuit continues to operate with its emergency brake on when it comes to what qualifies as “objective evidence.”

Indeed, the “*Nieves* exception is satisfied in ‘circumstances where officers have probable cause to make arrests, but typically exercise their discretion not to do so.’” *Gonzalez*, 144 S. Ct. at 1667 (quoting *Nieves v. Bartlett*, 587 U.S. 391, 406 (2019)). “The only express limit we placed on the sort of evidence a plaintiff must present for that purpose is that it must be objective.” *Id.* In *Gonzalez*, the Supreme Court

clarified that Mr. Rahdar did not have to provide “examples of identifiable people” (even though the video evidence on its face shows specific comparator evidence) who parked in front of an empty police car the way Mr. Rahdar did “but were not arrested.” *Id.* But a plaintiff can alternatively point to other evidence that the conduct, though common, rarely results in arrest.” *Gonzalez v. Trevino*, 21-50276, On Petition for Rehearing En Banc at pg. 10 (Ho, J, dissenting from denial of rehearing en banc) (February 22, 2023).

On February 5, 2021, when Respondent Cordero parked in the Friends Pub parking lot and surveilled Friends Pub for forty-five minutes, Mr. Rahdar sought to ask Respondent Cordero a question about the surveillance of Friends Pub. Unparalleled surveillance from FPD Officers had become the norm for Mr. Rahdar. Whether he was running his business, driving in his vehicle, or even purchasing his daily coffee, Mr. Rahdar was acutely aware that certain FPD Officers were watching him. However, Defendant Cordero refused to acknowledge Mr. Rahdar and ignored his requests to roll down his window. After Mr. Rahdar parked in front of Defendant Cordero’s empty vehicle and became distracted with his phone, Defendant Cordero saw an opportunity to “get Fred” and took advantage of his ability to arrest Mr. Rahdar. Sneaking back into his vehicle, Defendant Cordero called in the calvary and ordered Mr. Rahdar’s arrest.

Defendant Cordero provoked and entrapped Mr. Rahdar in an unprecedented manner, to find

pretext for arresting him. It is as though an officer signaled for a plaintiff to walk across the street for a chat, and then arrested him for jaywalking, all in retaliation for plaintiff's prior criticisms of the officer's department. This is what the *Nieves* exception established as an exception, even if there is probable cause for the arrest, and this is the equivalent of what happened here.

"Evidence that an arrest has never happened before (i.e., a negative assertion) can support the proposition that there are instances where similarly situated individuals...hadn't been arrested." *Gonzalez v. Trevnio*, 42 F.4th 487, 505 (5th Cir. 2022) (Oldham, J., dissenting). Mr. Rahdar presented numerous pieces of objective negative evidence, which included testimony from six FPD law enforcement veterans (with over 100 years of combined law enforcement history), who had never arrested someone for obstructing a parking lot.

Mr. Rahdar also put forth arrest record evidence which mirrored the evidence brought by Sylvia Gonzalez. The Supreme Court recognized that petitioner Sylvia Gonzalez's survey – showing that, in the last decade, no one charged with the crime for which she was arrested had engaged in conduct similar to hers – is objective evidence admissible pursuant to the *Nieves* exception. *Gonzalez*, 602 U.S. at 675 (Jackson, J., with whom Sotomayor, J. joins, concurring) (citing *Nieves, supra*). However, the panel determined that twelve years of arrest records which showed that FPD had never used T.P.C. §42.03 to arrest someone for sitting in their parked car, in a

private parking lot, while stopped in front of an empty unmarked police vehicle did not satisfy *Gonzalez*. Even though Mr. Rahdar presented the exact same evidence as Mrs. Gonzalez, his evidence was not objective-enough. *Gonzalez*, 42 F.4th at 506 (Oldham, J., dissenting).

Probable cause becomes just one piece of objective evidence in a retaliatory arrest case that involves a multi-year retaliation campaign. “*Nieves* simply requires objective evidence.” *Gonzalez*, 42 F.4th at 502 (Oldham, J., dissenting). “And evidence is ‘[s]omething (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact.’” *Gonzalez*, 42 F.4th at 502 (Oldham, J., Dissenting) (quoting *Evidence*, BLACK’S LAW DICTIONARY (11th Ed. 2019)). “So, the retaliatory-arrest only needs to provide (objective) evidence that *supports* the required proposition by tending to connect the officers’ animus to the plaintiff’s arrest.” *Id.* (emphasis in original). However, regarding the second part of the *Nieves* exception, or the “exercise of discretion,” “probable cause does little to prove or disprove the causal connection between animus and injury.” *Nieves*, 139 S. Ct. at 1727.

Rahdar presented objective evidence which included twelve years of arrest records, testimony from six FPD Officers that they would not have arrested Mr. Rahdar for obstructing a parking lot, testimony from a senior lieutenant who testified that he would have just asked Mr. Rahdar to move his vehicle, testimony from an FPD whistleblower who confirmed the context of a multi-year retaliation

campaign against Mr. Rahdar in retaliation for his speech, and specific comparator evidence that Mr. Rahdar was arrested because of his speech.

As a delivery driven society, if T.P.C. § 42.03 (or Obstructing a Passageway) was commonly enforced and police officers did not “exercise discretion” regarding arrests, we would expect the arrest records to reflect numerous arrests of delivery drivers who commonly use their flashers to block driveways, parking lots, and even obstruct roadways. Yet, in the twelve years of arrest records procured by Mr. Rahdar as objective evidence, there are zero arrests for this common and customary behavior.

2. The Panel’s Decision Split This Court from the Eighth Circuit.

By ignoring testimony from six FPD law enforcement veterans (with over 100 years of combined law enforcement history), who had never arrested someone for obstructing a parking lot, the panel’s decision regarding officer testimony split from the Eighth Circuit decision in *Murphy v. Schmitt*, 143 F.4th 914 (2025), according to which *Gonzalez and Nieves* support using statements from police officers regarding whether they would have arrested a plaintiff for a particular offense to “bolster” a plaintiff’s other allegations that officers, rarely, if ever arrest people for sitting in their car and parking in front of an empty unmarked police vehicle. *Murphy v. Schmitt*, 143 F.4th 914, 918 (2025) Thus, in *Murphy*, the court allowed the statements to bolster

the objective evidence; however, here, the officer testimony was dismissed.

Testimony, which the Fifth Circuit dismissed, included: (1) Defendant Price, who testified that as a 12-year law enforcement veteran he had never arrested anyone for obstructing a parking lot; (2) Defendant Wilkerson, who testified that as 9-year law enforcement veteran, he had never arrested anyone for obstructing a passageway; (3) Defendant Kulhanek, who testified that as a 6-year law enforcement veteran, he had never arrested anyone for obstructing or blocking a private parking lot; (4) Defendant Cordero, who testified that as a 26-year law enforcement veteran he had never arrested anyone for obstruction; (5) Defendant Yodzis, who testified that as a 45-year law enforcement veteran, he could not recall arresting someone for obstructing a highway or passageway; and (6) FPD Whistleblower Mr. Beckwith, who had effectuated 450-500 arrests while he was employed at FPD, had never arrested anyone for obstructing a highway or other passageway. Clearly, “exercising their discretion not to do so.” *Gonzalez*, 144 S. Ct. at 1667 (quoting *Nieves*, 587 U.S. at 406).

When a police force focuses its resources on innocent people and their business because of their constitutional rights to speak freely and petition, it is unconstitutional. Mr. Rahdar’s retaliatory arrest claim is about a multi-year scheme to punish and intimidate a speaker that was planned and developed over a prolonged period of time, and probable cause should not blind the Fifth Circuit to the

unprecedented retaliation that occurred here. Notwithstanding the overwhelming objective evidence which Mr. Rahdar produced, the Fifth Circuit ignored this plethora of evidence and returned to the pre-*Gonzalez, Gonzalez*, 42 F.4th at 502 (Oldham, J, dissenting). interpretation of objective evidence, which was soundly rejected by the Supreme Court.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT IGNORED THE PRECEDENTS SET FORTH IN *NIEVES AND GONZALEZ*.

The Fifth Circuit's panel—in conflict with *Nieves and Gonzalez*—ignored the plethora of objective evidence Mr. Rahdar put forward of context and pattern in a multi-year targeting and retaliation campaign which resulted in multiple arrests of Petitioners. Further, Mr. Rahdar established that the statute under which he was arrested had never been used to prosecute anything remotely analogous.

II. THIS CASE WARRANTS SUPREME COURT REVIEW.

The Court should grant certiorari in this case. The question presented is important and the case is an appropriate vehicle given the well-developed facts and well-preserved legal arguments.

A. The Issue is Important.

The question presented is both practically and jurisprudentially important.

Gonzalez authorized the use of any objective evidence to defeat probable cause. The Fifth Circuit's unpublished opinion, Pet. App. 1a, ignores the interpretation of objective evidence set forth in *Gonzalez*. If the holding of the Fifth Circuit is right, no evidence presented against law enforcement would be adequate to survive summary judgment.

B. This Case Is an Appropriate Vehicle.

The Court is unlikely to find a better vehicle that this case to apply the precedent of *Gonzalez* as to the interpretation of objective evidence.

First, the Fifth Circuit's unpublished opinion, Pet. App. 1a, leaves all issues open for this Court to resolve the interpretation of objective evidence.

Second, petitioners preserved all available First and Fourth Amendment arguments.

III. MR. RAHDAR'S FIRST AMENDMENT RIGHT WAS VIOLATED.

Respondents' violated Mr. Rahdar's right to engage in protected speech. The First Amendment protects individuals from retaliatory actions by government officials, including law enforcement officers, including prosecutions for speaking out. *See*

Nieves v. Bartlett, 587 U.S. at 398 (quoting *Hartman v. Moore*, 547 U.S. 250, 256 (2006)). *See also Gonzalez*, 602 U.S. at 662 (quoting *Hartman*, 547 U.S. at 256). By targeting Mr. Rahdar for speaking out, Respondents engaged in retaliatory arrests in violation of Mr. Rahdar's First Amendment rights.

IV. MR. RAHDAR'S FOURTH AMENDMENT RIGHT WAS VIOLATED

Respondents violated Mr. Rahdar's Fourth Amendment rights when they engaged in a pattern of retaliatory arrests against Mr. Rahdar. The Fourth Amendment protects the right of citizens "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Mr. Rahdar established by a plethora of objective evidence that Respondents did not have probable cause to arrest him.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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