22-1025 GONZALEZ V. TREVINO

DECISION BELOW: 42 F.4th 487

LOWER COURT CASE NUMBER: 21-50276

QUESTION PRESENTED:

In *Nieves v. Bartlett*, this Court held that probable cause does not bar a retaliatory arrest claim against a "police officer" when a plaintiff shows "that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." 139 S. Ct. 1715, 1727 (2019).

The circuits admittedly disagree on whether only specific examples of non-arrests, Pet. App. 28-29 (5th Cir. 2022), or any "objective proof of retaliatory treatment" can satisfy this standard, *Lund v. City of Rockford*, 956 F.3d 938, 945 (7th Cir. 2020); see also *Ballentine v. Tucker*, 28 F.4th 54, 62 (9th Cir. 2022).

Here, a 72-year-old councilwoman organized a petition criticizing a city manager, and unwittingly placed it in her binder during a council meeting. Two months later, respondents-the city manager's allies- engineered her arrest for tampering with a government record. That charge has no precedent involving similar conduct, was supported by an affidavit based on the councilwoman's viewpoints, and skirted ordinary procedures to ensure her jailing. The councilwoman sued respondents but no arresting officer.

The questions presented are:

1. Whether the *Nieves* probable cause exception can be satisfied by objective evidence other than specific examples of arrests that never happened.

2. Whether the *Nieves* probable cause rule is limited to individual claims against arresting officers for split-second arrests.

CERT. GRANTED 10/13/2023