No. 23-276

In the Supreme Court of the United States

DIJON SHARPE,

Petitioner,

v.

WINTERVILLE POLICE DEPARTMENT, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Fourth Circuit

BRIEF FOR THE INSTITUTE FOR JUSTICE AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

Whether the Court should hold that it was clearly established by October 2018 that filming police officers in public is First Amendment protected activity, or at least clearly establish that it is First Amendment protected activity going forward.

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INTEREST OF *AMICUS CURIAE*[1]

The Institute for Justice is a nonprofit public interest law center committed to defending the essential foundations of a free society by securing greater protection for individual liberty. Central to that mission is promoting accountability to the Constitution for government officials and state actors.

A pillar of the Institute for Justice's work is the First Amendment and reinvigorating the founding principles that embraced the free flow of information that is indispensable to our democratic form of government and to our free enterprise economy. The Institute for Justice launched its Project on Immunity and Accountability in part to help protect First Amendment rights. Section 1983 is the best, most reliable way to sue individual government officials for violating constitutional rights. But immunity doctrines, such as qualified immunity, let the government avoid constitutional accountability. These immunity doctrines are not rooted in the text of Section 1983, but rather in common-law principles or policy decisions.

Here, Petitioner engaged in core First Amendment speech: Documenting government abuse. Respondents, however, retaliated against Petitioner for exercising his First Amendment right to record the police. And the Fourth Circuit let Respondents use qualified immunity to hide from their constitutional violations. The Institute for Justice is dedicated to protecting

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[1] No counsel for a party authored this brief in whole or in part, and no person other than the amicus curiae or its counsel made a monetary contribution to fund the preparation or submission of this brief. Sup. Ct. R. 37.6. Amicus curiae gave timely notice to the parties of its intent to file this brief. Sup. Ct. R. 37.2.

free speech rights and holding government officials accountable when they violate those rights. That's why the Institute for Justice is working to restore a textualist approach to Section 1983, which would rid the statute of the modern doctrine of qualified immunity and the artificial hunt for "clearly established" law. But at a minimum, the Court should hear this case and resolve the circuit split so there is clarity on this important constitutional issue.

SUMMARY OF THE ARGUMENT

Since the Founding, documenting government abuse has been a core American value. In fact, the "long train of abuses" by King George III—compiled by Thomas Jefferson with Benjamin Franklin and John Adams's assistance—spans half the Declaration of Independence. And before that, the Framers used the quickest media available to them—pamphlets—to expose everything from the Boston Massacre to the first shots fired at Lexington and Concord. *See, e.g.*, EZEKIEL RUSSELL, A BLOODY BUTCHERY, BY THE BRITISH TROOPS: OR, THE RUNAWAY FIGHT OF THE REGULARS (1775).

Fast forward nearly 250 years. Now, the video has long replaced the pamphlet, but the purpose remains the same: "to assure unfettered interchange of ideas for bringing about of political and social changes desired by the people." *Roth* v. *United States*, 354 U.S. 476, 484 (1957). Indeed, as the Framers recognized, speech has the power to "shame[ ] or intimidate[ ]" "oppressive officers . . . into more honourable and just modes of conducting affairs." *Id.* (quoting 1 JOURNALS OF THE CONTINENTAL CONGRESS 108 (1774)).

That's exactly what recordings of the police accomplish—documenting encounters so individuals, like Petitioner, can freely share what the government is doing. And because others can now see and hear that speech through video recordings, it can spark change—both in how officers act and in broader legislative policies.

But as this case shows, qualified immunity lets government officials off the hook even when they violate this fundamental First Amendment right. Qualified immunity, however, is both atextual and ahistorical. And a growing number of jurists, including members of nearly every court of appeals, the panel below *in this case*, and members of this Court, all agree that reading qualified immunity into Section 1983 is a policy choice and unmoored from both its statutory text and the common law in 1871. Those realities justify the Court revisiting qualified immunity wholesale.

In the meantime, this case gives the Court a chance to fix qualified immunity as it applies to this critical First Amendment right, which affects every police encounter across the United States and has divided the circuits: Whether it is clearly established that filming police officers in public is a protected activity under the First Amendment.

The Court should take this case and provide a clear and definitive rule: Yes, the First Amendment protects the right of individuals to film police officers in public—and the police cannot arrest or retaliate against someone for exercising that right. Such a bright-line rule is important for two reasons. *First*, it would empower Americans today to freely document

government abuses just like our Framers. The First Amendment requires definitive and settled rules from courts. Otherwise, would-be speakers "must necessarily guess" at whether their speech is protected, resulting in a chilling effect, where would-be speakers are intimidated from engaging in constitutionally protected speech. *Citizens United* v. *Fed. Election Comm'n*, 558 U.S. 310, 324 (2010) (quoting *Connally* v. *Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)). In other words, without a clear rule, would-be recorders will just stop recording rather than risk retaliation.

Second, a bright-line rule would unify the courts below and provide fair notice to every officer about the right to record. That clarity is even more important under the qualified immunity analysis. To overcome the judge-made scavenger hunt of finding "clearly established" caselaw, lower courts (and police officers) often find themselves slicing and dicing factual differences to excuse constitutional violations. In right-to-record cases, then, lower courts improperly focus on *who* is recording, *how* the video is being recorded, or other immaterial factors that muddle the analysis and result in police officers escaping liability for their constitutional violations.

That's exactly what happened here. Respondents, the district court, and the Fourth Circuit all narrowly focused on *how* Petitioner recorded the police (through Facebook Live) and *who* was doing the recording (a passenger) to excuse the officer's retaliation. But under the First Amendment and this Court's qualified immunity precedent, it shouldn't matter what app or device Petitioner used to record the police—or whether Petitioner saved the video to his

device, on some cloud-based service, or through a website like Facebook. Nor should it matter whether a journalist, a bystander, a passenger, or anyone else is doing the recording. Instead, a right to record the police is a right to record the police. This case gives the Court the chance to articulate a clean rule at the proper level of generalization.

Indeed, this Court had the same opportunity to set such a rule in 2021, when it denied a petition that asked whether the right to publicly film the police was clearly established in 2014. *Frasier* v. *Evans*, 142 S. Ct. 427 (Nov. 1, 2021) (petition denied). Yet still today, lower courts continue to get this issue wrong because the Court has never articulated the right to record once-and-for-all. If the Court passes on the same question again, other circuits, like the Second, Sixth, Eighth, and D.C. Circuits, could use this as an excuse to argue that the right is not clearly established. This Court can forever answer that question here.

The Institute for Justice understands well the need for such a clean rule; otherwise, government officials can retaliate with impunity against anyone who records them. In Texas, for example, a citizen journalist tracked police calls on a scanner, drove to the scene to record the police encounter, and then uploaded the video to his YouTube channel, "Corruption Report." The local police didn't like this, so they eventually excluded the journalist from a police press conference because he was not "real media" and even arrested him for filming a police encounter. *Pulliam* v. *County of Fort Bend*, No. 4:22-cv-4210 (S.D. Tex.). That type of retaliation, unfortunately, is not uncommon. Police have used everything from pretextual

arrests to the use of force to stop individuals from recording. *See, e.g.*, Ray Sanchez, *Growing Number of Prosecutions for Videotaping the Police*, ABC NEWS (July 16, 2010, 10:24 AM), https://tinyurl.com/ABC-arrests; Chris Koeberl, *Denver Police Accused of Using Excessive Force, Illegal Search*, FOX31 DENVER (Nov. 25, 2014, 10:39 AM), https://tinyurl.com/Denver-Story. The First Amendment, however, protects everyone's right to record the police without the fear of retaliation. This case gives the Court the chance to say exactly that.

What's more, as the repetition of these cases shows, whether it is clearly established that the First Amendment protects the right to record is an important and chronic issue that warrants the Court's attention now. As Petitioner explained, there are tens of millions of traffic stops each year in the United States, Pet.'s Br. 20, with countless more police interactions off the road. Recording these encounters safeguards the truth—for both the individual and the officer. In contrast, without a robust right to record, officers would, for instance, be free to turn off their body cams so they can open fire on protesters in Kentucky, *see infra* pp. 17–18, or shove a 75-year-old man in Buffalo to the ground then claim the man simply tripped and fell, Jay Croft & Elizabeth Hartfield, *Buffalo Officers Quit Special Team After 2 Officers are Suspending for Shoving a 75-year-old Protester*, CNN (June 6, 2020, 8:32 PM), https://tinyurl.com/Buffalo-Elderly. This protection works both ways. For example, without video recordings, individuals would be free to accuse officers of beating somebody when, in fact, the alleged victim was intoxicated, fell on his own, and hit

his head despite the officer's attempt to catch him. Hannah Grover, *Body Camera Footage Clear's Officer's Name*, FARMINGTON DAILY TIMES (Feb. 2, 2017, 6:49 PM), https://tinyurl.com/Video-Clears-Cop. Put simply, recordings are necessary for everyone to know the truth.

In the end, lower courts and states will continue to excuse retaliation from police officers when someone records the police until this Court steps in. Even worse, many would-be speakers would just not record in the first place. That chilling effect would diminish government transparency and our protections under the First Amendment. So if the Court is going to continue with the "clearly established" rule, the Court should at least clear the brush on this issue, resolve the circuit split, and provide the bright-line rule needed to protect this important and fundamental First Amendment right.

ARGUMENT

The First Amendment requires special protection and broad rules to prevent the "chilling" of speech. *See Counterman* v. *Colorado*, 600 U.S. 66, 75 (2023). Without that, restrictions on speech can deter otherwise lawful speech because "[a] speaker may be unsure about" whether his speech is protected or prohibited. *Id.* In other words, when in doubt, would-be-speakers remain silent. So if Americans are unsure about their right to record, they will simply turn off the cameras. That's the exact confusion the Fourth Circuit created—it placed in doubt *how* someone can record the police and *who* can do the recording. Under the First Amendment, however, the opposite should

be true. Courts must provide "breathing room" for legitimate speech that errs on the side of more speech and fewer restrictions, and thus, less fear and self-censorship for would-be speakers. *Id.*

To accomplish that, courts need to apply the same broad rules when it comes to the qualified immunity analysis for First Amendment violations. But don't worry, that is nothing new. Rather, it has always been the rule outside the Fourth Amendment context where, as shown here, officers are not deciding what level of force to use during a split-second decision while in the face of significant danger. *Cf. Mullenix* v. *Luna*, 577 U.S. 7, 13–16 (2015).

When the Court has articulated the proper level of generality in other non-split-second-Fourth-Amendment cases, it has been careful to *not* define the right too narrowly—as the Fourth Circuit did here. Rather, broad rules accomplish two things: They still give officers "fair warning" that their conduct was unlawful, but they also protect the constitutional right at issue by holding officers liable when they violate that right. That is the precise situation here. If defined properly, "the right of individuals to film police officers in public" would give officers proper notice, while also giving individuals the breathing room necessary to protect, rather than chill, speech.

I. This case presents an ideal opportunity for the Court to articulate a clear rule about the right to film the police.

According to this Court, the purpose of qualified immunity is to give government officials "fair warning" that their conduct is unconstitutional. *Hope* v.

Pelzer, 536 U.S. 730, 741 (2002). To accomplish that, courts decide whether a hypothetical and reasonable officer would have known that his conduct was "constitutionally permissible." *See Taylor* v. *Riojas*, 141 S. Ct. 52, 53 (2020) (per curiam). Courts can look to various sources, including previous cases from this Court, to decide whether a right is clearly established, and thus capable of giving an officer "fair warning." *Hope*, 536 U.S. at 743–45.

In making that determination, not every factual distinction matters. Rather, courts essentially use "the Goldilocks principle." *Golodner* v. *Berliner*, 770 F.3d 196, 205–06 (2d Cir. 2014); *see also Reichle* v. *Howards*, 566 U.S. 658, 664 (2012) (describing the "balance" of the clearly established test between the "vindication of constitutional rights" and allowing officials to "reasonably [ ] anticipate when their conduct may give rise to liability for damages"). When defining the constitutional right at issue, courts must be "just right" in comparing or distinguishing previous cases—not too broad and not too narrow. For instance, "[i]f the right is defined too narrowly based on the exact factual scenario," such as "the right to record the police on an iPhone during traffic stops in the rain," then police "will invariably receive qualified immunity." *Golodner*, 770 F.3d at 206.

This Court has warned against such an "overreliance on factual similarit[ies]" to define the right at issue as both "danger[ous]" and "rigid." *Hope*, 536 U.S. at 742. Indeed, as the Court put it, "officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Id.* at 741.

In *Hope*, the appropriate level of generality was that "corporal punishment" by prison guards violated the Eighth Amendment. 536 U.S. at 742. It didn't matter whether guards punished an inmate by handcuffing him to a fence, to the bars of a prison cell, or even to a hitching post in the sun—any reasonable officer, in any of those factual scenarios, would have fair notice that they were violating the Eighth Amendment. *Id.* at 733–35, 742–43. Thus, the Court reversed the Eleventh Circuit's grant of qualified immunity because distinguishing *how* the guards employed corporal punishment defined the right too narrowly. *Id.* at 746–46.

The Court has repeatedly reaffirmed its warning to lower courts to not slice and dice cases so thinly. In *Riojas*, the Court considered whether prison guards violated an inmate's Eighth Amendment rights when the guards housed him in cells "teeming with human waste" for six days. 141 S. Ct. at 53. The Fifth Circuit had granted qualified immunity because, although it "was clear that prisoners couldn't be housed in cells teeming with human waste for months on end," the Fifth Circuit "hadn't previously held that a time period so short violated the Constitution." *Taylor* v. *Stevens*, 946 F.3d 211, 222 (5th Cir. 2019). But this Court reversed: Whether it was six days or six months, "any reasonable officer should have realized that [the] conditions of confinement offended the Constitution." *Riojas*, 141 S. Ct. at 54. In other words, the specific time period just didn't matter. What *did* matter was the more general principle that the inmate endured "deplorably unsanitary conditions" for "an extended period of time." *Id.* at 53.

The Court signaled the same result in *Sause* v. *Bauer*, 138 S. Ct. 2561 (2018). In *Sause*, a *pro se* petitioner alleged that officers violated her rights when they ordered her to stop praying in her apartment. The Tenth Circuit had granted qualified immunity because Sause failed to "identify a single case in which this court, or any court for that matter, has found a First Amendment violation based on a factual scenario even remotely resembling the one we encounter here." *Sause* v. *Bauer*, 859 F.3d 1270, 1275 (10th Cir. 2017). But this Court reversed because, outside of the Fourth Amendment context, the Court is less concerned with a close factual similarity to overcome qualified immunity. Rather, as this Court put it, "There can be no doubt that the First Amendment protects the right to pray," *Sause*, 138 S. Ct. at 2562. And based on just that allegation in the complaint, the officers were not entitled to qualified immunity.

Then in *McCoy* v. *Alamu*, the Court summarily reversed another grant of qualified immunity that distinguished facts too narrowly, this time for an officer's assault on an inmate. 141 S. Ct. 1364 (2021) (mem.). As the Fifth Circuit saw it, *how* the officer assaulted the inmate made all the difference—the officer sprayed the inmate in the face with "an isolated, single use of pepper spray." *McCoy* v. *Alamu*, 950 F.3d 226, 233 (2020). To the Fifth Circuit, no previous case would have told officers that this conduct was constitutionally impermissible. Instead, it was only clearly established that assaulting an inmate with a "full can of [pepper] spray" violated the Eighth Amendment, *id.*, or that assaulting an inmate with a different weapon, such as "a fist, taser, or baton," was clearly

established, *id.* at 235 (Costa, J., dissenting in part). So the Fifth Circuit granted qualified immunity.

But this Court reversed for the same reason as in *Riojas*—i.e., that *how* (or *by what means*) the officer assaulted the inmate was irrelevant. 141 S. Ct. at 1364. *McCoy*, then, involved the same misstep as in *Riojas*: It involved a hyper-specific focus on granular facts to distinguish cases that don't actually impact the "fair notice" analysis to officers. For example, telling officers to not put inmates in "cells teeming with human waste" should be enough no matter how long the inmates are forced to endure it, just like telling officers not to assault inmates "for no reason" should be enough regardless of the "weapon of choice" the officer uses to deploy the beating. *See McCoy*, 950 F.3d at 234–35 (Costa, J., dissenting in part).

But here, the Fourth Circuit made the same mistake by taking an over-granulized view of the constitutional right at issue, conflicting with *Hope*, *Riojas*, *McCoy*, and *Sause*. As the panel below framed it, "[t]he First Amendment right here is a passenger's alleged right to livestream their own traffic stop." Pet. App. 14a. As the Fourth Circuit saw it, "videotaping" the police, which was clearly established, *see Turner* v. *Lieutenant Driver*, 848 F.3d 678, 683 (5th Cir. 2017), was constitutionally different than "livestreaming a police officer." Pet. App. 14a. And cases establishing that a bystander had the right to record did not put the police on notice that a passenger also had the right to record. *Id.* (citing *Fields* v. *City of Philadelphia*, 862 F.3d 353, 359–60 (3d Cir. 2017)).

The Fourth Circuit's narrow framing is wrong. For the right to record, it doesn't matter *who* is recording or *how* that person is doing the recording. Those details don't matter—and courts shouldn't consider them in the qualified immunity analysis. Indeed, the Fourth Circuit's approach would guarantee that officers *always* receive qualified immunity because there are infinite details that can distinguish *who* is recording or *how* someone is recording the police. For instance, should it matter if a bystander, the target of an investigation, a journalist, a social media influencer, a YouTuber, a victim, a neighbor, a local news outlet, or a passenger is the person doing the recording? Or does it just matter that someone is recording the police in public? This Court can definitively resolve that question.

Likewise, does it matter if the recording is broadcast live on local television, shot on a professional video camera, stored on an iPhone, instantly shared through Zoom, shared in real-time through WhatsApp or FaceTime (or any other app, including Twitch, Snapchat, or TikTok), captured through a cloud-based service, recorded through Facebook Live, or shot on whatever new and changing recording technology is developed in the coming weeks, months, and years? *Compare Quaraishi* v. *St. Charles County*, 986 F.3d 831, 834, 839 (8th Cir. 2021) (denying qualified immunity when officers teargassed reporters preparing to record a live broadcast near a protest), *with* Pet. App. 14a–15a (granting qualified immunity for livestreaming).

Again, this Court should calibrate the appropriate level of generality in these cases. In contrast, without

this Court's guidance, lower courts will continue to struggle over the proper level of generalization—quibbling over whether something is "too hot or too cold," rather than acknowledging that framing the constitutional issue simply as an individual's right to record the police in public is "just right."

This result matches the Court's approach with the First Amendment, which the Court has never chopped up into small pieces like the Fourth Circuit did here. Instead, the First Amendment requires broad and definitive rules. Without it, "[a] speaker may be unsure about the side of a line on which his speech falls. Or he may worry that the legal system will err, and count speech that is permissible as instead not." *Counterman*, 600 U.S. at 75. This Court has long warned against the "chilling effect" and self-censorship that uncertainty under the First Amendment brings with it. That is why this Court, unlike the Fourth Circuit below, has endorsed broad protections under the First Amendment, which allow for "breathing room" and "more valuable speech" to occur. *Id.*

Take *Branzburg* v. *Hayes*, 408 U.S. 665 (1972). In that case, the Court rejected an attempt to limit *who* or *what* the "freedom of the press" protects. The Court explained how the "[f]reedom of the press is a 'fundamental personal right' which 'is not confined to newspapers and periodicals.'" *Id.* at 704. Rather, the historical roots of the First Amendment encompass "every sort of publication" that conveys "information and opinion," including "pamphlets and leaflets." *Id.* The First Amendment also protects everyone, including not just "the organized press," but also "lecturers,

political pollsters, novelists, academic researchers, or dramatists." *Id.* at 704; *see also Brown* v. *Ent. Merchs. Ass'n*, 564 U.S. 786, 790 (2011) (applying First Amendment protections to "video games" just like it protects "books, plays, and movies").

Likewise here, the right to record shouldn't turn on or off depending on *who* is holding the camera or *how* they're recording the video. *See Fields* v. *City of Philadelphia*, 862 F.3d 353, 357–58 (3d Cir. 2017) ("All we need to decide is whether the First Amendment protects the act of recording police officers carrying out official duties in public places."). The Court should take this case and provide a clear and administrable rule that the First Amendment protects an individual's right to record the police in public. That formulation of the right is specific enough to give "fair notice" to officers that Petitioner (or anyone else) was entitled to record the traffic stop—using livestream or any other method. Anything less would allow lower courts, like the Fourth Circuit did here, to use the very "rigid" and unworkable approach that this Court has warned against.

II. The First Amendment right to record the police is a recurring and important issue that protects the rights and safety of citizens and police alike.

The right to record the police in public—a quintessential issue of public concern—lies at the heart of the First Amendment. *See Snyder* v. *Phelps*, 562 U.S. 443, 451–52 (2011). As this Court has "frequently reaffirmed," "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and

is entitled to special protection." *Connick* v. *Myers*, 461 U.S. 138, (1983) (citation and quotation marks omitted). Filming the police fits squarely on that rung—empowering "uninhibited, robust, and wide-open" public discussions on everything from society, culture, and civil rights to law enforcement policies and government funding. *Fields*, 862 F.3d at 359 (quoting *Snyder*, 562 U.S. at 452).

It also goes without saying, but the right to record the police is a massively recurring issue. In 2018, for instance, the Department of Justice reported that twenty-four percent *of all American residents*, aged sixteen or older, experienced contact with the police in the previous year. Erika Harrell & Elizabeth Davis, U.S. Dep't of Justice, *Contacts Between Police and the Public, 2018—Statistical Tables* (Feb. 3, 2023), *available at* https://tinyurl.com/DOJ-2018-Stats. That's over 61 million residents each year experiencing at least one police encounter. And according to the DOJ, more than 1.3 million of those residents "experienced threats or use of force from police." *Id.* at 5. Put simply, the right to film those encounters reaches every corner of America every single day.

What's more, everyone stands to benefit from having a clear record of what happens during those police encounters. As Petitioner highlighted, civilian videos have provided valuable information about how the police treated George Floyd, Eric Garner, Philando Castile, and Rodney King. Pet. Br. 21–22. The list goes on and on—almost too overwhelming to fully grasp. But the importance of these videos cannot be overstated. Without them, the truthful account of what happens would easily be lost. That would prevent officers from

quickly overcoming false allegations of misconduct, while also preventing the bad apples from being exposed.

Indeed, bystander recordings are vital investigatory tools despite the growing and widespread use of police body cameras. In New York, for example, a plainclothes officer found himself in a shootout with a suspect in a parking lot. The full chaos of the scene, and the justified actions of the police officers, were captured on both a video-surveillance camera, Tina Moore et al., *NYPD Cop Shot, Suspect Killed During Wild Gunfire in Washington Heights*, N.Y. POST (Apr. 19, 2019, 12:07 PM), https://tinyurl.com/NY-Parking-Camera, and a bystander video across the street, which confirmed the officers' instructions to "[d]rop the gun and come out with your hands in the air." Larry Celona et al., *Bystander Caught on Video Encouraging Cop Shooter: 'Don't Give Up!'*, N.Y. POST (Apr. 19, 2019, 7:39 PM), https://tinyurl.com/Crazy-Bystander. Body cameras can also fail—leaving critical gaps in the story. Take what happened in the death of Patrick Lyoya in Michigan. *See* Amy Forliti, *Officer's Body Camera Went Dark During Key Moment of Patrick Lyoya's Death,* PBS (Apr. 15, 2022, 5:28 PM), https://tinyurl.com/PBS-Bodycam. After a physical struggle with police, the body cam video "goes dark 42 seconds before the officer shoots [Patrick]." *Id.* According to officers, body cameras can be deactivated by holding a button on the camera, which can accidentally happen during physical encounters. *Id.* A bystander cellphone video, however, filled in the gaps of what happened—showing the officer on top of Patrick before he shoots Patrick in the back of the

head. Karie Herringa, *Video Footage Shows GRPD Officer Shoot Patrick Lyoya in the Head*, FOX17 MICH. (Apr. 14, 2022, 10:12 AM), https://tinyurl.com/Lyoya-Fox17. After this video emerged, the officer was charged with second-degree murder.

Other officers have been caught intentionally turning off their body cameras. During the protests that followed Breonna Taylor's death, Kris Smith livestreamed protests in Louisville, Kentucky through Facebook Live. One recording revealed that National Guard Troops and local police officers opened fire on the protesters, killing one. Kala Kachmar, *Minute by Minute: What Happened the Night David McAtee was Shot Dead by National Guard*, LOUISVILLE COURIER J. (Jan. 22, 2021, 8:35 PM), https://tinyurl.com/Kris-Smith-Video. Kris's Facebook Live video was critical to figuring out what happened because the two local police officers involved in the shooting did not have their body cameras on, which was in violation of the police department's policy. *Id.* And the National Guard soldiers did not wear body cameras at all.

The list of videos either clearing or indicting police officers can go on and on. That reality underscores the need for this Court's intervention. Videos of police encounters are the best and most objective way to protect everyone involved by capturing the truth. By taking this case, the Court can once and for all establish an individual's First Amendment right to record the police in public. This would empower citizens, like Petitioner, to record police encounters, holding officers responsible for when they retaliate against the exercise of that fundamental right. On the other hand,

officers doing their jobs will quickly have their names cleared, letting them move on with their lives.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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