No. 25-112

IN THE
SUPREME COURT OF THE UNITED STATES

OKELLO T. CHATRIE,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the
U.S. Court of Appeals for the Fourth Circuit

BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY, AND FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici curiae are the Reporters Committee for Freedom of the Press ("Reporters Committee"), Knight First Amendment Institute at Columbia University, and Foundation for Individual Rights and Expression ("FIRE") (together, "amici"), organizations that advocate for the First Amendment rights of the public and the press.

The Reporters Committee is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970, when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. As an organization that defends the rights of journalists and news organizations, the Reporters Committee often appears as amicus curiae in federal courts, as it did before the Court of Appeals at the panel and en banc stages in this case, to highlight the effects of excessive surveillance on the confidential reporter-source relationships that underpin so much public interest journalism. *See United States v. Chatrie*, 107 F.4th 319, 372–73 (4th Cir. 2024) (Wynn, J., dissenting) (citing Br. of Amicus Curiae Reps. Comm. for Freedom of the Press in Supp. of Def.-Appellant at 7–8, No. 22-4489 (4th Cir. Jan. 27, 2023)); Br. of Amicus Curiae Reps. Comm. for Freedom of the Press in Supp. of

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[1] Pursuant to Supreme Court Rule 37, counsel for amici curiae state that no partys counsel authored this brief in whole or in part; no party or partys counsel made a monetary contribution intended to fund the preparation or submission of this brief; and 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.

Reh'g En Banc, No. 22-4489 (4th Cir. Aug. 29, 2024); *see also, e.g.*, Br. of Amici Curiae Reps. Comm. for Freedom of the Press & 15 Media Orgs., *Tuggle v. United States*, 142 S. Ct. 1107 (2022) (No. 21-541); Br. Amici Curiae of Reps. Comm. for Freedom of the Press & 19 Media Orgs., *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (No. 16-402); En Banc Br. of Amici Curiae Reps. Comm. for Freedom of the Press & 8 Media Orgs., *United States v. Moore-Bush*, 36 F.4th 320 (1st Cir. 2022) (Nos. 19-1582, 19-1625, 19-1583, 19-1626); Br. of Reps. Comm. for Freedom of the Press, Thomas Jefferson Ctr. for Prot. of Free Expression & 17 Media Orgs. as Amici Curiae, *Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193 (4th Cir. 2017) (No. 15-2560).

The Knight First Amendment Institute at Columbia University is a non-partisan, not-for-profit organization that defends the freedoms of speech and the press in the digital age through strategic litigation, research, policy advocacy, and public education. The Institute's aim is to promote a system of free expression that is open and inclusive, that broadens and elevates public discourse, and that fosters creativity, accountability, and effective self-government. The Institute is particularly committed to upholding constitutional limits on government surveillance that chills core First Amendment activities, and it frequently litigates cases and appears as amicus curiae in federal courts to challenge surveillance that unduly burdens protected association and expression. *See, e.g.*, *United States v. Belmonte Cardozo*, No. 25-4239 (4th Cir. Oct. 28, 2025) (amicus) (cellphone searches at the border); *Doc Soc'y v. Rubio*, 141 F.4th 1273 (D.C. Cir. 2025) (counsel) (social media registration); *Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193 (4th Cir.

2017) (counsel) (surveillance of Internet communications).

FIRE is a nonpartisan nonprofit that defends the individual rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended First Amendment rights nationwide through public advocacy and targeted litigation. FIRE represents speakers, without regard to their political views, in lawsuits across the United States. *See, e.g.*, *Spectrum WT v. Wendler*, 151 F.4th 714, *reh'g en banc granted*, 157 F.4th 673 (5th Cir. 2025); *Volokh v. James*, 148 F.4th 71 (2d Cir. 2025), *certified questions accepted*, 267 N.E.3d 1245 (N.Y. 2025); *Fellowship of Christian Univ. Students at Univ. of Tex. at Dallas v. Eltife*, No. 1:25-cv-1411, 2025 WL 2924228 (W.D. Tex. Oct. 14, 2025). FIRE has a particular interest in this case because it regularly defends the First Amendment rights of speakers, including journalists, targeted by the government for viewpoint-based retaliation. *See, e.g.*, *Villarreal v. Alaniz*, 145 S. Ct. 368 (2024), *on remand*, 134 F.4th 273 (5th Cir. 2025), *cert. petition filed*, No. 25-29 (July 7, 2025); *Volokh v. Chiu*, No. 3:24-cv-08343 (N.D. Cal. filed Nov. 22, 2024); *Rosado v. Bondi*, No. 1:26-cv-01532 (N.D. Ill. filed Feb. 11, 2026).

SUMMARY OF THE ARGUMENT

Armed with a geofence warrant, government investigators can comb through the location histories of millions to expose the movements of every individual present in a given area during a given time period. That license to cast an indiscriminate and

retrospective dragnet over any location—without any individualized suspicion—poses obvious threats to First Amendment rights, including the ability of journalists to gather confidential information and inform the public, and of citizens to speak on matters of public concern and engage in political or religious association. Should the Court adopt the government's position, law enforcement investigating any purported crime could obtain a warrant authorizing the surveillance of anyone visiting a nearby newsroom, marching in protest on the streets outside, or gathering to pray in the house of worship next door.

The Fourth Amendment was meant to serve as a bulwark against this "stifling" of "liberty." *Stanford v. Texas*, 379 U.S. 476, 482–85 (1965) (citation omitted). For that reason, the Court has required an especially rigorous application of the Fourth Amendment's requirements when First Amendment rights are at stake. And in recent cases, the Court has warned that modern location-tracking technologies can enable a "too permeating police surveillance" that threatens constitutionally protected activities and associations. *Carpenter v. United States*, 585 U.S. 296, 305 (2018) (quoting *United States v. Di Re*, 332 U.S. 581, 595 (1948)).

Geofence warrants should founder against this bulwark. Unlike cell-site location information or GPS tracking of a vehicle, the location data obtained through a geofence search does not merely "provide[] an intimate window" into the life of a single, specific suspect, *id.* at 311; it reveals the movements, activities, and associations of every person, journalist and passerby alike, who happens to have been present

near the site and around the time of a suspected crime. Nor do geofence warrants target individuals suspected of criminality, as is the case with every advanced form of surveillance this Court has ever authorized; instead, they sanction searches in reverse, ensnaring everyone to develop the individualized suspicion that might have justified the search of someone in the first instance. The Court should interrogate the constitutionality of geofence warrants with acute attention to this unprecedented power and the dangers it poses to discrete First Amendment freedoms and all the various ways in which they are interconnected. "It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, and therefore are united in the First Article's assurance." *Thomas v. Collins*, 323 U.S. 516, 530 (1945) (citations omitted). The totality of the impact on these constitutional freedoms compels the conclusion that the geofence warrant used by the government in its investigation of Okello Chatrie violated the Fourth Amendment.

ARGUMENT

I. Geofence searches implicate important First Amendment interests.

The phones most people carry today generate detailed and sensitive location data wherever they go, providing comprehensive accounts of their movements over time. *See Carpenter*, 585 U.S. at 314

(noting "the exhaustive chronicle of location information casually collected by wireless carriers today"); *Riley v. California*, 573 U.S. 373, 396 (2014) ("Historic location information is a standard feature on many smart phones and can reconstruct someone's specific movements down to the minute, not only around town but also within a particular building."). Geofence searches take advantage of these vast repositories by indiscriminately sweeping up the location data of anyone who happens to be carrying a phone near the site of suspected criminal activity. These dragnets inevitably reveal not just the movements of those ensnared, but also a wealth of sensitive information about their expressive activities and associations—from journalists interviewing confidential sources, to protesters attending rallies, to congregants attending religious services. The ability to cast a net at any time and around any location—without the need for individualized suspicion or particularity—poses obvious threats to these First Amendment interests.

A. Newsgathering

Geofence searches can intrude on the First Amendment rights of the press to obtain and publish news and information, and of the public to receive such information. The press historically "has been a mighty catalyst in awakening public interest in governmental affairs, exposing corruption among public officers and employees and generally informing the citizenry of public events and occurrences." *Estes v. Texas*, 381 U.S. 532, 539 (1965). Geofence searches can interfere with that role, and the newsgathering process, by exposing stories pursued, journalistic

methods employed, and, most critically, the identities of sources consulted. Journalists regularly rely on confidential sources in fulfilling their role as "an important restraint on government," *Minneapolis Star & Trib. Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983), and sources often demand anonymity out of fear that—if their identities are revealed—they will face prosecution, loss of employment, or even threats to their lives.[2] Because in-person meetings play a crucial role in reporter-source relationships, location tracking has long been a tool employed by officials hoping to investigate and ultimately chill communications with the media.[3] But the "more sophisticated" tracking, *Kyllo v. United States*, 533 U.S. 27, 36 (2001), enabled by geofence searches has expanded investigators' field of view dramatically and, if the Fourth Circuit is not reversed, risks deterring sources from speaking to journalists for fear of exposure.

Virtually every state provides some protection for journalists from being compelled to identify confidential sources or disclose newsgathering material (either through statute or the common law),

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[2] *See Introduction to the Reporter's Privilege Compendium*, Reps. Comm. for Freedom of the Press, https://perma.cc/BNT4-HHPY (last updated Nov. 5, 2021); Alexander M. Bickel, *The Morality of Consent* 84 (1975) (observing that "[i]ndispensable information comes in confidence from" a great variety of people in many different positions).

[3] *See Government Surveillance: U.S. Has Long History of Watching White House Critics and Journalists*, Newsweek (July 24, 2017), https://perma.cc/B76N-3Z6B (noting the CIA's track record of "follow[ing] newsmen . . . in order to identify their sources").

and most of the federal courts of appeals afford some qualified protection for journalist materials and sources. *See Introduction to the Reporter's Privilege Compendium*, *supra*. These protections are necessary because, "[i]f reporters were routinely required to divulge the identities of their sources, the free flow of newsworthy information would be restrained and the public's understanding of important issues and events would be hampered in ways inconsistent with a healthy republic." *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000) (citing *Minneapolis Star & Trib. Co.*, 460 U.S. at 585 ("An untrammeled press is a vital source of public information, and an informed public is the essence of working democracy.")); *see also, e.g.*, *Zerilli v. Smith*, 656 F.2d 705, 710–11 (D.C. Cir. 1981) ("Without an unfettered press, citizens would be far less able to make informed political, social, and economic choices. But [its] function as a vital source of information is weakened whenever the ability of journalists to gather news is impaired." (citing *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring))); *Riley v. City of Chester*, 612 F.2d 708, 714 (3d Cir. 1979) (recognizing the "interrelationship between newsgathering, news dissemination and the need for a journalist to protect his or her source"); *Baker v. F & F Inv.*, 470 F.2d 778, 782 (2d Cir. 1972) ("Compelled disclosure of confidential sources unquestionably threatens a journalist's ability to secure information that is made available to him only on a confidential basis[.]"), *cert. denied*, 411 U.S. 966 (1973).

Journalists rely on sources of information to uncover the truth and report the news, and sometimes their source relationships are so sensitive that they

meet in person.[4] The reporting of the landmark Pentagon Papers disclosures, for instance, involved repeated confidential meetings between Neil Sheehan of *The New York Times* and his source, Daniel Ellsberg, at each other's homes.[5] In another historically significant example, Bob Woodward met Mark Felt in an underground parking garage and had discussions that led to *The Washington Post*'s exposure of the Watergate story.[6] The value of the reporting that would be lost if journalists could not credibly guard the confidentiality of those contacts cannot be overstated.

Thus, in-person meetings have always played a role in reporter-source relationships. And those interactions have taken on special importance in

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[4] Amy Mitchell et al., Pew Rsch. Ctr., *Investigative Journalists and Digital Security* 8–9 (2015), https://perma.cc/PS6S-VZZT ("When it comes to the specific actions journalists may or may not take to protect their sources, the most common technique by far . . . is to meet them in person."); Hum. Rts. Watch, *With Liberty to Monitor All: How Large-Scale US Surveillance Is Harming Journalism, Law, and American Democracy* 4 (2014), https://perma.cc/KUH6-4MVF (finding that growing awareness of government monitoring has led journalists "to adopt elaborate steps to protect sources and information," up to and including "abandoning all online communication and trying exclusively to meet sources in person").

[5] *See* Janny Scott, *Now It Can Be Told: How Neil Sheehan Got the Pentagon Papers*, N.Y. Times (Jan. 7, 2021), https://perma.cc/NFM7-B76C.

[6] *See* Carol Pogash, *At Last, Bernstein Meets Deep Throat*, N.Y. Times (Nov. 20, 2008), https://perma.cc/VY6E-B3E7.

today's climate of pervasive electronic surveillance.[7] The tactics of multiple federal administrations provide a vivid reminder that the electronic trail left by journalists when they interact with their sources is only a secret court order away from government scrutiny.[8] Notably, the current federal administration has weakened Justice Department policies that had imposed stringent guardrails on the ability of officials pursuing leak investigations to seek these kinds of electronic records from journalists.[9] When any stray digital breadcrumb could put a person's identity at risk, journalists have been forced to find offline ways to interact with sources and obtain information, and in-person meetings provide a crucial safety valve by which that information can reach the public.

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[7] *See generally* Jennifer R. Henrichsen & Hannah Bloch-Wehba, Reps. Comm. for Freedom of the Press, *Electronic Communications Surveillance: What Journalists and Media Organizations Need to Kno*w (2017), https://perma.cc/SW4K-EVAX.

[8] *See, e.g.*, Chris Young & Emily Vespa, *The FBI Search of a Washington Post Reporter's Home: What We Know and Why It Matters*, Reps. Comm. for Freedom of the Press (Jan. 16, 2026), https://perma.cc/W5C3-Y6EM; Charlie Savage & Katie Benner, *Trump Administration Secretly Seized Phone Records of Times Reporters*, N.Y. Times (June 2, 2021), https://www.nytimes.com/2021/06/02/us/trump-administration-phone-records-times-reporters.html; Charlie Savage, *CNN Lawyers Gagged in Fight with Justice Dept. over Reporter's Email Data*, N.Y. Times (June 9, 2021), https://perma.cc/8LKT-3J3V.

[9] Of course, even when they were in effect under the previous administration, these policies provided no protection against investigations conducted by state or local governments.

The investigative technique at issue in this case, however, threatens to erode this safe harbor for confidentiality. Not only could a geofence search incidentally capture the next Neil Sheehan visiting the home of the next Daniel Ellsberg, or the next Deep Throat providing critical information to a future Woodward and Bernstein, but investigators could use any suspected crime near a newsroom as a pretext to identify everyone who visited that day.

B. Speech and association

The ability to report and receive the news is not the only First Amendment right put at risk by government abuse of geofence searches. They also directly implicate the association and expression that are "central to the meaning and purpose of the First Amendment," *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 329 (2010).

This Court has long protected participation in peaceful protest, *see Counterman v. Colorado*, 600 U.S. 66, 81 (2023) (noting that "dissenting political speech" lies "at the First Amendment's core"), and "involvement in partisan politics," *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 467 (1977). It has rejected government attempts to unmask and surveil those engaged in protected political activity, *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 616 (2021), or those "espous[ing] dissident beliefs," *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958); *see Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 99–100 (1982) (protecting minor political party from forced disclosure of donors because of "past history of government harassment"

and "hostility," including "massive" "FBI surveillance"). Geofence searches, however, risk allowing the government to circumvent these constitutional limits, both with respect to the individuals engaged in this activity and the journalists covering it. *See Branzburg v. Hayes*, 408 U.S. 665, 672–75 (1972) (analyzing journalist's privilege not to testify in three separate cases, two of which involved reporters covering the Black Panthers and other civil rights groups).

When journalists are out in the field reporting on demonstrations, for example, geofence searches can sweep up the location data of these reporters, as well as the political protesters and campaigners they are covering and who are being subjected to law enforcement scrutiny simply because they happened to attend a political demonstration or canvass a neighborhood near a suspected crime. *See United States v. U.S. Dist. Ct.*, 407 U.S. 297, 320 (1972) (noting the "temptation to utilize" government surveillance "to oversee political dissent"). During the 2016 presidential inauguration, for example, an independent investigation demonstrated how location data from a variety of sources "yielded a trove of personal stories and experiences," from "elite attendees at presidential ceremonies" and "supporters assembling across the National Mall" to "[p]rotesters"—"all surveilled and recorded permanently in rigorous detail."[10] This risk is

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[10] Stuart A. Thompson & Charlie Warzel, *Twelve Million Phones, One Dataset, Zero Privacy*, N.Y. Times (Dec. 19, 2019), https://perma.cc/W27D-ZHH6 ("After the pings of Trump supporters, basking in victory, vanished from the National Mall on Friday evening, they were replaced hours later by those of

exacerbated by the increasing use of digital tools for political mobilization that collect location data. Activists use location-based apps and websites to find demonstrations in their areas,[11] while political campaigns rely on apps that collect the location data of their staff, volunteers, and voters, allowing canvassers to identify which houses to visit.[12]

Law enforcement has already accessed this sort of location data in ways that will predictably burden political advocacy (and the journalists who cover it). During the summer of 2020, for instance, law enforcement agencies across the country obtained the

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participants in the Women's March, as a crowd of nearly half a million descended on the capital.").

[11] *See, e.g.*, WeBot, Facebook, https://www.facebook.com/WeBot (sharing reminders and information about protests near user); *Women's March Community*, Apple App Store, https://perma.cc/H4P8-A4RV (helping activists "take meaningful action" and "connect with members near you").

[12] *See, e.g.*, *TPAction's Brand-New Mobile Application*, Turning Point Action, https://perma.cc/EG3J-PF9C (providing "door knocking routes" and other tools to "easily find voters near you"); Joe Anuta, *With Election Days Away, Mamdani Turns Canvassing Operation into High Gear*, Politico (Oct. 31, 2025), https://perma.cc/5Q36-GM8M (describing use of location-based "app allowing door knockers to reach their targets"); Robert McMillan, Kevin Poulsen & Emily Glazer, *Apps Give Trump, Biden Campaigns Tools to Rally, Track Supporters*, Wall St. J. (Oct. 24, 2020), https://www.wsj.com/politics/elections/apps-give-trump-biden-campaigns-tools-to-rally-track-supporters-11603548001 (describing presidential campaign apps that "organize volunteers" and "identify users who attend a particular event or travel to a particular location with the app installed on their device").

location data of thousands of individuals engaged in largely peaceful protests. In Lansing, Michigan, a liberal advocacy group acquired and then shared with state law enforcement the location data of hundreds of individuals who attended an American Patriots Rally to protest their governor's COVID-19 pandemic stay-at-home orders.[13] In Kenosha, Wisconsin, law enforcement investigating "minimal fire damage" at a public library "set a two-hour window and a geofence covering the middle third of the downtown's largest public park space," indiscriminately collecting location data "on the busiest night of the protest."[14] In Minneapolis, Minnesota, a bystander who had recorded a protest received an email from Google informing him that his location data "was subject to [a geofence] warrant, and would be given to the police."[15] A year earlier, the Manhattan District Attorney conducted a geofence search in an attempt to identify victims of a suspected crime that occurred during a clash of left-wing and right-wing activist groups.[16]

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[13] Beth LeBlanc, *Tracking Michigan Protesters Raises Privacy, COVID-19 Spread Questions*, Detroit News (June 2, 2020), https://perma.cc/JL3E-857T.

[14] Russell Brandom, *How Police Laid Down a Geofence Dragnet for Kenosha Protestors*, Verge (Aug. 30, 2021), https://www.theverge.com/22644965/kenosha-protests-geofence-warrants-atf-android-data-police-jacob-blake.

[15] Zack Whittaker, *Minneapolis Police Tapped Google to Identify George Floyd Protesters*, TechCrunch (Feb. 6, 2021), https://perma.cc/ENF4-NJTL.

[16] George Joseph, *Manhattan DA Got Innocent People's Google Phone Data Through a 'Reverse Location' Search Warrant*, Gothamist (Aug. 12, 2019), https://perma.cc/RH9K-4BJZ.

The geofence swept up the data of protesters, counter-protesters, and local residents alike in one of the most densely populated urban areas in the country.[17]

Perhaps the most well-known example is the geofence search conducted by the FBI in its investigation of those who stormed the U.S. Capitol on January 6, 2021. The FBI sought data on all devices over a 4.5-hour period located within a four-acre area that included not only the building itself but also its surroundings.[18] While the predicate for the FBI investigation was suspected criminal activity in and immediately around the Capitol, this wide net also inevitably swept up information on individuals who were protesting lawfully, as well as many journalists who covered the incident.[19]

Geofence searches likewise threaten religious association. In much the same way that geofence searches can be used to expose journalists and confidential sources or surveil political activists and dissidents, a geofence search conducted near a church, a synagogue, or a mosque could identify anyone who brought a phone to services. *See Carpenter*, 585 U.S.

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17 *Id.* ("Court records show that this dragnet data request captured the location data of multiple people who were put under law enforcement scrutiny, even though they had nothing to do with the crimes under investigation.").

18 Mark Harris, *A Peek Inside the FBI's Unprecedented January 6 Geofence Dragnet*, Wired (Nov. 28, 2022), https://perma.cc/3JRJ-DY34.

19 *Id.*

at 311 (location data can reveal religious associations).[20]

This threat is not hypothetical. The geofence search in this very case encompassed Journey Christian Church, a "mega church" in Midlothian, Virginia that at the time hosted over 1,500 weekly attendees at its services. *See* JA-160.[21] Indeed, most of the devices swept up in the initial geofence search appear to have been located within the church. JA-2003–07, JA-2013–16, *United States v. Chatrie*, No. 22-4489 (4th Cir. Jan. 20, 2023), Doc. No. 19-8. Despite this disproportionate impact on religious association, the warrant application did not even mention the church, referring to it merely as "an adjacent business." JA-131. And at the height of the COVID-19 pandemic, a county in California went even further, deliberately targeting religious worshippers by using "mobile phone data to map concentrations of congregants gathering on the . . . grounds" of Calvary Chapel, a church in San Jose that state officials suspected of violating stay-at-home rules, including "data that specifically captured movement within the boundaries of the church's

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[20] *See also* Thompson & Warzel, *supra* (location data revealed "religious observers at church services"). The numerous apps that collect location data to facilitate users' religious observance would be especially sensitive targets. *See, e.g.*, Joseph Cox, *Leaked Location Data Shows Another Muslim Prayer App Tracking Users*, Vice (Jan. 11, 2021), https://perma.cc/T336-HBZJ; Joseph Cox, *How the U.S. Military Buys Location Data from Ordinary Apps*, Vice (Nov. 16, 2020), https://perma.cc/EAX8-2C69.

[21] *See* Christian Standard Mag., *2019 Annual Church Survey* 5 (2020), https://perma.cc/8DP3-J7X9.

property."[22] *Cf. Arizona v. Mayorkas*, 143 S. Ct. 1312, 1314 (2023) (statement of Gorsuch, J.) ("They surveilled church parking lots, recorded license plates, and issued notices warning that attendance at even outdoor services satisfying all state social-distancing and hygiene requirements could amount to criminal conduct.").

Just as sources may decline to speak with journalists for fear of talking to a reporter who could be surveilled, the tracking of citizens engaged in free speech and political or religious association may additionally deter such persons from speaking to the press about their activities, creating a further impediment to the ability of reporters to obtain information about matters of public concern regarding these individuals and their institutions.

II. Geofence warrants authorizing the indiscriminate collection of location information violate the Fourth Amendment.

The Founders intended Fourth Amendment protections to guard against the "stifling" of First

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[22] Gabriel Greschler, *Phone Data, Surveillance Used to Monitor San Jose Church That Violated COVID Rules*, Mercury News (Mar. 8, 2023), https://www.mercurynews.com/2023/03/08/phone-data-surveillance-used-to-monitor-san-jose-church-that-violated-covid-rules; *see also* John & Nisha Whitehead, *Geofence Surveillance: First, They Spied on Protesters. Then Churches. You're Next*, Rutherford Inst. (Mar. 15, 2023), https://perma.cc/32UL-UAQX (arguing that geofence searches of "people praying and gathering on church grounds" risk "free-falling into a total surveillance state").

Amendment freedoms. *Stanford*, 379 U.S. at 482–85. Recognizing this "vital relationship" between privacy, on the one hand, and protected activities and associations, on the other, *NAACP*, 357 U.S. at 462, the Court has required an especially rigorous application of the Fourth Amendment's requirements when First Amendment rights are at stake, *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978). Because geofence warrants enable searches that as described above burden First Amendment interests, they must survive this more rigorous review. But the Court's location-tracking precedents make clear that they cannot. Geofence warrants like the one at issue here indiscriminately sweep up sensitive location data without individualized suspicion and they necessarily cannot "describe the things to be seized . . . [with] the most scrupulous exactitude." *Stanford*, 379 U.S. at 485 (citation omitted). This "dragnet type law enforcement practice[,]" *United States v. Knotts*, 460 U.S. 276, 284 (1983), epitomizes the "too permeating police surveillance" that undermines "a free people," *Di Re*, 332 U.S. at 595.

A. Fourth Amendment requirements must be scrupulously applied when First Amendment rights are at stake.

Since the Founding, the protections of the First and Fourth Amendments have been closely intertwined. "The bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression." *Stanford*, 379 U.S. at 482–85 (citation omitted) (describing abusive English practices targeting the publishers of dissident

publications); *see also Ams. for Prosperity Found.*, 594 U.S. at 620 (Thomas, J., concurring) ("Founding-era Americans understood the freedom of the press to include the right of printers and publishers not to be compelled to disclose the authors of anonymous works." (citation and internal quotation marks omitted)). Lord Camden's insight—that a "discretionary power given to messengers to search wherever their suspicions may chance to fall" is "totally subversive of the liberty of the subject"—continues to inform interpretation of the Fourth Amendment today. *Marcus v. Search Warrants*, 367 U.S. 717, 728–29 (1961) (quoting *Wilkes v. Wood*, 19 How. St. Tr. 1153, 1167 (C.P. 1763)).

The Court has repeatedly recognized this link between "individual privacy" and "free expression"—and "the potential danger" that "unreasonable surveillance" poses to each. *U.S. Dist. Ct.*, 407 U.S. at 315–17; *see Stanford*, 379 U.S. at 482–85 ("The[] [First, Fourth, and Fifth] [A]mendments are indeed closely related, safeguarding not only privacy and protection against self-incrimination but conscience and human dignity and freedom of expression as well." (citation and internal quotation marks omitted)); *NAACP*, 357 U.S. at 462 (recognizing "the vital relationship between freedom to associate and privacy in one's associations"). History, social science research, and common sense all confirm: "Awareness that the government may be watching chills associational and expressive freedoms." *United States v. Jones*, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring); *Ams. for Prosperity Found.*, 594 U.S. at 616–17 (finding that California's donor disclosure requirement created an unnecessary risk of chilling

association by "indiscriminately sweeping up the information of *every* major donor"); S. Rep. No. 94-755, at 17 (1976), https://perma.cc/TNJ9-3X7Y ("[T]he government's surveillance activities in the aggregate—whether or not expressly intended to do so—tends . . . to deter the exercise of First Amend[ment] rights by American citizens who become aware of the government's domestic intelligence program.").[23] Our democracy and public discourse are impoverished when "ordinary citizen[s]," seeking to "steer wide[]" of official scrutiny, *Counterman*, 600 U.S. at 77–78 (citation and internal quotation marks omitted), refrain from activities and associations that are constitutionally protected but might nonetheless get caught up in the "indiscriminate sweep" of government surveillance, *Stanford*, 379 U.S. at 486.

This Court has thus insisted that Fourth Amendment review be especially rigorous when First Amendment interests hang in the balance, especially in cases involving intrusions on the newsgathering and reporting process. *See Zurcher*, 436 U.S. at 564 ("[T]he warrant requirement should be administered

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[23] A growing body of social science research illustrates the causal relationship between pervasive surveillance and chilling effects in the digital age. *See, e.g.*, Jonathon W. Penney, *Chilling Effects: Repression, Conformity, and Power in the Digital Age* 99 (2025); Elizabeth Stoycheff, *Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of NSA Internet Monitoring*, 93 Journalism & Mass Commc'n Q. 296, 307 (2016); Neil M. Richards, *The Dangers of Surveillance*, 126 Harv. L. Rev. 1934, 1950 (2013); Julie E. Cohen, *What Privacy Is For*, 126 Harv. L. Rev. 1904, 1917 (2013); Daniel J. Solove, *The First Amendment as Criminal Procedure*, 82 N.Y.U. L. Rev. 112, 131–32 (2007).

to leave as little as possible to the discretion or whim of the officer in the field."). Those interests demand a searching application of the Fourth Amendment's usual standards to "protect against gross abuses," *New York v. P.J. Video, Inc.*, 475 U.S. 868, 874 (1986) (quoting *Heller v. New York*, 413 U.S. 483, 492–93 (1973)), on the theory that applying those standards with "scrupulous exactitude" will deny officers the discretion to "rummage at large" or "deter normal editorial and publication decisions," *Zurcher*, 436 U.S. at 564–66 (citation omitted).

In some contexts, the Court has gone further, requiring that searches that intrude more heavy-handedly on First Amendment interests satisfy even stricter standards. As Justice Gorsuch has observed, "the *First* Amendment operates independently of the Fourth and provides different protections," *Nieves v. Bartlett*, 587 U.S. 391, 414 (2019) (italics in original) (Gorsuch, J., concurring in part and dissenting in part), and so it is unsurprising that the typical application of Fourth Amendment standards will not always or fully safeguard First Amendment freedoms. In *United States v. Ramsey*, for instance, even though the Court concluded that the Fourth Amendment permitted warrantless searches of mail at the border, the Court reserved the separate question of whether such searches would "impermissibly chill[] the exercise of free speech" if not for a statutory reasonable-suspicion requirement and a ban on reading any correspondence contained therein. 431 U.S. 606, 624 (1977). And to similar effect, the Court has held that other warrant exceptions—the exigency exception, for instance—must yield to First Amendment interests where, say, pursuing the

seizure of books or films absent a warrant "would effectively constitute a 'prior restraint.'" *P.J. Video*, 475 U.S. at 873 (citing *Roaden v. Kentucky*, 413 U.S. 496 (1973)).

The First and Fourth Amendments thus work together to ensure that broad surveillance authority does not abridge the freedoms of the press, speech, and association.

B. Geofence warrants fail a straightforward—let alone scrupulous—application of the Fourth Amendment's requirements.

Geofence warrants enable searches that burden First Amendment interests and must therefore meet "the most scrupulous exactitude," including in "describ[ing] the things to be seized." *Stanford*, 379 U.S. at 485 (citation omitted). Whether a description is sufficiently specific or "too generalized to pass constitutional muster" will depend on the circumstances as well as the item seized. *Id.* at 485-86. As described above, the circumstances here include the obvious risk that a geofence warrant will reveal and burden, intentionally or not, sensitive First Amendment-protected activities and associations. *See supra*, Part I. The power to expose any individual present at a newsroom, a political rally, or a church requires a level of particularity and precision that geofence warrants like the one obtained here cannot provide.

The Court's precedents on modern location-tracking technologies reflect acute attention to the

capacity for these "innovations in surveillance tools" to invade individual privacy and chill the exercise of constitutional rights. *Carpenter*, 585 U.S. at 305; *see also U.S. Dist. Ct.*, 407 U.S. at 315. In reaffirming its "special solicitude for location information," the Court in *Carpenter* stressed the "deeply revealing nature" and "retrospective quality" of location data that "provides an intimate window" into "familial, political, professional, religious, and sexual associations." 585 U.S at 311, 312, 314, 320 (citation omitted). Phone location data, in particular, implicates these overlapping Fourth and First Amendment concerns because a phone "faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales." *Id.* at 311; *see also Kyllo*, 533 U.S. at 40 (describing the "'significant' compromise of . . . privacy" that occurs when surveillance reaches inside a person's home).

Geofence searches pose an even "greater danger to a free people" than the searches at issue in *Carpenter* and *Jones*. *Di Re*, 332 U.S. at 595. Unlike cell-site location information or GPS tracking of a vehicle, the location data obtained through a geofence search does not merely "provide[] an intimate window" into the life of a single, specific suspect—it reveals the movements, activities, and associations of every person who happens to have been present near the site and around the time of a suspected crime. *Carpenter*, 585 U.S. at 311; *see Jones*, 565 U.S. 400. Ready access to this kind of information would make the work of painstaking stakeouts unnecessary: With the location histories of millions within reach, "police need not even know in advance whether they want to

follow a particular individual, or when. Whoever the suspect turns out to be, he has effectively been tailed every moment of every day[.]" *Carpenter*, 585 U.S. at 312. As a result, geofence searches dissolve the traditional "practical" checks on improper monitoring of the public and the press. *Jones*, 565 U.S. at 429 (Alito, J., concurring). Indeed, the general and indiscriminate potential of geofence searches resembles the reviled rummaging that inspired the Fourth Amendment, supercharged for the digital age. *See Riley*, 573 U.S. at 403.

The use of this power offends a reasonable expectation of privacy, but geofence warrants like the one here do not provide the particularity and precision necessary to constrain it. They allow the government to obtain the location data of any individual based on happenstance—because they happened to be in the vicinity of a suspected crime—with no consideration for whether they are engaged in constitutionally protected activity or association. In *Ybarra v. Illinois*, the Court foreclosed this result, making clear that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." 444 U.S. 85, 91 (1979). Just as probable cause to believe that the bartender of the Aurora Tap Tavern, where the search in *Ybarra* took place, was selling heroin did not mean the police could search the pockets of every patron present, *see id.*, probable cause to believe that someone was carrying a phone while committing a bank robbery does not license a search of every incidental passerby. Were it otherwise—if the government were required to show probable cause only to believe that the dataset to be pulled would

contain the suspected criminal's location somewhere in its sweep—there would be no limit on the permissible breadth of geofence searches. An index of the entire neighborhood, or for that matter the entire city, would be even more likely to catch the suspect in its net. That result is untenable, and upholding this warrant would authorize a digital-age version of the same search that the Court held unconstitutional in *Ybarra*.

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The technology at issue in this case poses intolerable threats to First Amendment-protected activities and associations. Geofence searches enable the tracking of people meeting in newspaper offices, marching in protests, and attending houses of worship with hardly a grain of individualized suspicion. This Court should reaffirm that particularized warrants, supported by individualized probable cause, play an essential role in protecting First Amendment rights from unjustified surveillance. "No less a standard could be faithful to First Amendment freedoms." *Stanford*, 379 U.S. at 485.

CONCLUSION

For the foregoing reasons, the Reporters Committee, Knight First Amendment Institute at Columbia University, and FIRE respectfully urge the Court to recognize the First Amendment interests at stake in holding that the geofence warrant here violated the Fourth Amendment.

Respectfully submitted,

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March 2, 2026