No. 22-481

IN THE
Supreme Court of the United States

DAPHNE MOORE,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the 1st Circuit

BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 13 MEDIA ORGANIZATIONS IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici are the Reporters Committee for Freedom of the Press, First Amendment Coalition, Freedom of the Press Foundation, International Documentary Association, The Media Institute, National Newspaper Association, National Press Photographers Association, New England First Amendment Coalition, The News Leaders Association, News/Media Alliance, Society of Environmental Journalists, Society of Professional Journalists, Student Press Law Center, and Tully Center for Free Speech.

As news media organizations, publishers, and organizations dedicated to protecting the First Amendment interests of journalists, amici have a pressing interest in ensuring that warrantless surveillance authorities do not become an "instrument for stifling liberty of expression." *Marcus v. Search Warrants*, 367 U.S. 717, 729 (1961). Amici therefore write to highlight past misuses of persistent camera surveillance to intrude on the newsgathering process, as well as to underline the First Amendment interests at stake in the Fourth Amendment question at bar.

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

SUMMARY OF THE ARGUMENT

The history of the Fourth Amendment "is largely a history of conflict between the Crown and the press," *Stanford v. Texas*, 379 U.S. 476, 482 (1965), and the Constitution's prohibition on "unreasonable searches and seizures," U.S. Const. amend. IV, has served since the Founding as a vital safeguard for the First Amendment's guarantee of a free press. If not for its protections, boundless and standardless surveillance would deny the right to report the "breathing space" that it, like other "delicate and vulnerable" First Amendment freedoms, needs "to survive." *NAACP v. Button*, 371 U.S. 415, 433 (1963).

Against that backdrop, persistent camera surveillance can pose, and historically has posed, an obvious threat to the integrity of the newsgathering process. To stake out an "observation nest" near a constitutionally sensitive location—a newspaper office, a home, a church—is an old trick of security agencies hoping to identify reporters' sources and dam the flow of newsworthy information to the public. Timothy S. Robinson, *CIA Elaborately Tracked Columnist*, Wash. Post (May 4, 1977), https://perma.cc/J4U7-B2B2. But the technology at issue in this case abolishes the limits that once ensured persistent visual monitoring was "difficult and costly"—and thus an exceptional rather than an everyday intrusion. *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018) (quoting *United States v. Jones*, 565 U.S. 400, 429 (2012) (Alito, J., concurring in the judgment)). The contemporary pole camera gives the government a powerful, reliable tool to open "an intimate window into a person's life" and

associations, *id.* at 2217, including confidential reporter-source contacts on which so much newsgathering depends.

In this case, the U.S. Court of Appeals for the First Circuit divided evenly on the constitutionality of that kind of unflagging surveillance, mirroring the broader divide in the lower courts. *See* Pet. 3. One three-judge concurrence (the "Barron concurrence") would recognize the distinctive risks posed by targeted and persistent camera surveillance, different in kind rather than degree from a run-of-the-mill "security camera[]" in its capacity to expose the privacies of life. Pet. App. 63a (quoting *Carpenter*, 138 S. Ct. at 2220. The other would ignore those hazards. *See* Pet. App. 92a (the "Lynch concurrence"). The division within the First Circuit underlines a clear split over the constitutional standards that govern the use of this technology, while showcasing continuing confusion in the lower courts as to how the Fourth Amendment guards the "familial, political, professional, religious, and sexual associations" the First Amendment likewise protects. *Carpenter*, 138 S. Ct. at 2217 (quoting *Jones*, 565 U.S. at 415 (Sotomayor, J., concurring)). Only this Court's review can resolve those disputes.

Amici therefore urge this Court to grant the Petition. Under the rule that still governs in the First Circuit,[2] investigators could station a permanent, never-blinking eye with an indefinite memory outside any sensitive location on bare curiosity—on the off-

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[2] *See* Pet. 9 (explaining that the Circuit's failure to reach a majority judgment left in place its pre-*Carpenter* precedent).

chance, say, of catching the next Neil Sheehan visiting the next Daniel Ellsberg's apartment. *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. Such an "unrestricted power of search and seizure" is not only patently unreasonable but would also be a powerful "instrument for stifling liberty of expression," casting a chilling pall on the reporter-source contacts on which effective journalism often relies. *Marcus v. Search Warrants*, 367 U.S. 717, 729 (1961). The Court should reject that thin, dangerous construction of the Fourth Amendment and reaffirm that its requirements apply with "scrupulous exactitude" when First Amendment freedoms are also at stake. *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) (quoting *Stanford*, 379 U.S. at 485).

ARGUMENT

I. Targeted, persistent camera surveillance threatens First Amendment freedoms, including the freedom to gather news.

Experience teaches that a "too permeating police surveillance" will predictably intrude on the newsgathering process—exposing stories pursued, journalistic methods employed, and the identities of sources consulted. *United States v. Di Re*, 332 U.S. 581, 595 (1948). And because in-person meetings play a crucial role in reporter-source relationships, location tracking, in particular, has long been a tool employed by officials hoping to investigate and ultimately chill disclosures to the media. *See Government Surveillance: U.S. Has Long History of Watching*

White House Critics and Journalists, Newsweek (June 23, 1975), https://perma.cc/B76N-3Z6B (noting the CIA's track record of "follow[ing] newsmen . . . in order to identify their sources"). But the "more sophisticated systems" of visual surveillance that are now "in use or in development," *Kyllo v. United States*, 533 U.S. 27, 36 (2001), have expanded investigators' field of view dramatically. To conclude that those new tools are entirely unregulated by the Fourth Amendment, available for suspicionless and indefinite deployment outside any sensitive location, poses an obvious risk to the exercise of First Amendment freedoms.

a. Confidential in-person contacts between reporters and sources play an essential role in newsgathering.

"[J]ournalists frequently depend on informants to gather news, and confidentiality is often essential to establishing a relationship with an informant." *Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981). That some of the most consequential reporting about the functioning of government has depended on such sources is familiar enough that a plaque commemorates the "anonymous secure location"—a parking garage—where Bob Woodward would meet Mark Felt during the *Washington Post*'s investigation of the Watergate scandal. *Historical Marker Installed Outside 'Deep Throat' Garage*, ARLnow (Aug. 17, 2011), https://perma.cc/Z63R-AYWS. The reporting of the landmark Pentagon Papers disclosures likewise involved repeated confidential meetings between the *New York Times*'s Neil Sheehan and his source, Daniel Ellsberg, at each other's homes. *See* Scott,

supra. The value of the reporting that would be lost if journalists could not credibly guard the confidentiality of those contacts cannot be overstated.

While in-person meetings have always played a role in reporter-source relationships, those interactions have taken on special importance in a climate of pervasive electronic surveillance. *See generally* Jennifer R. Henrichsen & Hannah Bloch-Wehba, Reporters Comm. for Freedom of the Press, Electronic Communications Surveillance: What Journalists and Media Organizations Need to Know (2017), https://perma.cc/SW4K-EVAX. In recent leak investigations, the government has offered a vivid reminder that the electronic trail left by journalists' interactions with their sources is only ever a routine, secret court order away from exposure to investigators. *See, e.g.*, 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.[3] When any stray digital breadcrumb could put a source's identity at risk, in-person meetings provide a crucial safety valve.

As a result, as a 2015 report from the Pew Research Center documented, "[w]hen it comes to the

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[3] Exactly because of the important First Amendment interests at stake in reporter-source confidentiality, the Department of Justice recently adopted regulations prohibiting the use of "compulsory legal process for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering," with limited exceptions. 28 C.F.R. § 50.10(a)(2). While the regulations mark an important shift in the Department's approach, they lack the lasting force of a federal statute and provide, of course, no protection against investigations conducted by instruments of state governments.

specific actions journalists may or may not take to protect their sources, the most common technique by far . . . is to meet them in person." Amy Mitchell et al., Pew Research Ctr., Investigative Journalists and Digital Security at 8–9 (2015), https://perma.cc/PS6S-VZZT. And a 2014 study conducted by Human Rights Watch likewise found that growing awareness of the scope 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." Human Rights Watch, With Liberty to Monitor All: How Large-Scale US Surveillance Is Harming Journalism, Law, and American Democracy at 4 (2014), https://perma.cc/KUH6-4MVF. As one reporter put it, "Maybe we need to get back to going to sources' houses." *Id.* at 35. The question presented in this case is whether that safe harbor, too, will inevitably be eroded by an ever more expansive surveillance state.

b. Persistent camera surveillance has been misused in infamous past efforts to identify reporters' sources.

In light of the crucial role that in-person meetings with sources plays in the newsgathering process, it should be no surprise that crude variations on the surveillance at issue here have figured in past, now-infamous leak investigations. When a journalist's only option is "to go to their [source's] door," With Liberty to Monitor All, *supra*, at 35, officials hoping to out that source—disrupting the flow of newsworthy information to the public—will work to ensure that door has a camera pointed at it.

Perhaps the best-known example is the Nixon administration's relentless monitoring of columnist Jack Anderson, who in 1972 was "spied on by the CIA in a three-month, unsuccessful agency attempt to determine the sources of his news stories." Robinson, *supra*. Anderson and his staff were, in the eyes of the White House, too well-informed about United States policy towards India and Pakistan, as reflected in reporting that ultimately earned Anderson a Pulitzer Prize. *See National Reporting: Jack Anderson of* United Features Syndicate, The Pulitzer Prizes (1972), https://perma.cc/B4R6-FP7T. The Central Intelligence Agency therefore launched an extensive effort to identify his sources. And in addition to trailing Anderson to and from his home, his church, and his meetings, the agency "rented a room high up in the Statler Hilton Hotel, across the street from Anderson's office, to watch and photograph the comings and goings of the newsman and his informants." Mark Feldstein, Poisoning the Press: Richard Nixon, Jack Anderson, and the Rise of Washington's Scandal Culture at 207 (2010).

Though the government's surveillance of Anderson was an extreme case, it is, unfortunately, not an isolated one. Other reporters on Anderson's staff—including a young Brit Hume, now senior political analyst for FOX News Channel—were likewise targeted for around-the-clock visual surveillance. *See Q&A: Brit Hume Recollects the Days of Being a CIA Target*, Fox News (June 29, 2007), https://perma.cc/T4D6-E6AD. And the *Washington Post*'s Michael Getler earned the same invasive treatment—a CIA nest established "where

observation could be maintained of the building housing his office"—after he published a report on the movements of Soviet submarines. Memorandum from Howard J. Osborn, Central Intelligence Agency, "Family Jewels" at 27 (May 16, 1973), https://perma.cc/D5TY-AMF7; *see* Karen DeYoung & Walter Pincus, *CIA to Air Decades of Its Dirty Laundry*, Wash. Post (June 22, 2007), https://perma.cc/QCY9-M2TC.

As egregious an assault on press freedom as this Watergate-era surveillance of journalists was, though, traditional "practical" checks on visual surveillance constrained the government's ability to achieve its unconstitutional goals. *Jones*, 565 U.S. at 429 (Alito, J., concurring in the judgment). For one, because it took "a team of sixteen undercover officers" to keep a consistent eye on Anderson, the operation was labor-intensive and conspicuous; Anderson caught on, taking steps to preserve the confidentiality of his sources while exposing the operation to public ridicule. Feldstein, *supra*, at 206, 211. The effort was bounded, too, by the limits of the agents' memory and perception. Though the CIA watchers in fact captured a photo of one of Anderson's reporters meeting with a key source, the spies failed to recognize what they had managed to record. *See id.* at 212.

Today the same surveillance could be accomplished with a pole camera, dissolving those practical checks on abusive monitoring. Unlike a crowd of investigators in dark suits, a pole camera is cheap and discreet, evading the constraint that "limited police resources and community hostility" impose on obtrusive law enforcement tactics. *Illinois*

v. Lidster, 540 U.S. 419, 426 (2004). As the U.S. Court of Appeals for the Seventh Circuit acknowledged in a similar case, the devices here have "the practical advantage of enabling the government to surveil [Petitioner's] home without conspicuously deploying agents to perform traditional visual or physical surveillance." *United States v. Tuggle*, 4 F.4th 505, 511 (7th Cir. 2021). And "[u]nlike the nosy neighbor who keeps an eye on comings and goings," cameras like these "are ever alert, and their memory is nearly infallible." *Carpenter*, 138 S. Ct. at 2219. Soon, surely, their capacity will be augmented further by increasingly pervasive "facial recognition" technologies. Pet. App. 74a. The result is that the kind of sustained visual surveillance that once required the personal approval of high officials and the outlay of significant resources, *see* Feldstein, *supra*, at 212, has come within the reach of any petty authority hoping to indulge a curiosity.

II. The Fourth Amendment requires a warrant before investigators engage in targeted, persistent camera surveillance that would chill First Amendment rights.

If the threat of constant, limitless camera surveillance hangs over each home and newspaper office, the destruction of any secure setting for anonymous association will have a grievous effect on reporters' relationships with confidential sources. And "without some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972). As this Court's precedents make clear, that threat to the interests the First and Fourth Amendments both

safeguard requires strict adherence to the warrant requirement when the government conducts surveillance that will chill the exercise of First Amendment rights.

a. Fourth Amendment safeguards are of heightened importance where First Amendment rights are at risk.

From the outset, the protections of the First and Fourth Amendments have been closely intertwined. Just as "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," *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2390 (2021) (Thomas, J., concurring) (citation and internal quotation marks omitted), the prohibition on unreasonable searches was widely understood as a response to abusive English practices targeting the publishers of dissident publications, *see Stanford*, 379 U.S. at 482. As this Court has often observed, two of the landmark cases that informed the Fourth Amendment's adoption—*Entick v. Carrington*, 19 How. St. Tr. 1029 (C.P. 1765), and *Wilkes v. Wood*, 19 How. St. Tr. 1153 (C.P. 1763)—were press cases. And whether a particular case involves the institutional press or not, 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*, 367 U.S. at 728–729 (quoting *Wilkes*, 19 How. St. Tr. at 1167).

This Court has insisted, in that light, that the Fourth Amendment's requirements be enforced with an eye toward protecting First Amendment interests. *See Zurcher*, 436 U.S. at 564. In some settings, those interests demand a searching application of the Fourth Amendment's usual standards, because "[t]he necessity for a prior judicial determination of probable cause will 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)); "the preconditions for a warrant" will deny officers discretion to "rummage at large" or "deter normal editorial and publication decisions," *Zurcher*, 436 U.S. at 565–66. On other footings, because "the First Amendment operates independently of the Fourth and provides different protections," *Nieves v. Bartlett*, 139 S. Ct. 1715, 1731 (2019) (Gorsuch, J., concurring in part and dissenting in part), this Court has underlined that search regimes implicating distinctive First Amendment interests may require stricter safeguards than the Fourth Amendment, alone, would provide.

In *United States v. Ramsey*, 431 U.S. 606 (1977), for instance, having concluded that the Fourth Amendment permits warrantless searches of mail at the border, this Court reserved the separate question 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, *id.* at 624; *see also Tabbaa v. Chertoff*, 509 F.3d 89, 102 & n.4 (2d Cir. 2007) (separately analyzing certain border searches under the Fourth and First Amendments). To similar effect, this Court has held that other

warrant exceptions—the "'exigency' exception," for instance—must yield to First Amendment interests where, say, forgoing a warrant before seizing books or films "would effectively constitute a 'prior restraint.'" *P.J. Video*, 475 U.S. at 873 (citing *Roaden v. Kentucky*, 413 U.S. 496 (1973)). Across diverse contexts, then, the First and Fourth Amendments work together to ensure warrantless search regimes do not abridge the freedoms of speech and the press.

When the government points a pole camera at a newspaper office rather than an alley, or "a place of worship" rather than "an interstate highway," *Commonwealth v. Mora*, 150 N.E.3d 297, 308 (Mass. 2020) (citation omitted), its use squarely implicates those overlapping First and Fourth Amendment protections for "privacy in one's associations," *Ams. for Prosperity*, 141 S. Ct. at 2382 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958)). Like reading a traveler's letters or seizing a seller's books, surveillance of the home in particular—as opposed to a stretch of highway—is the kind of search power systematically likely to burden the exercise of First Amendment rights. That much is true whether in a particular case the government's camera captures Sheehan visiting Ellsberg or a homeowner meeting with her pastor. And the rule governing such surveillance must be framed with the "scrupulous exactitude" this Court requires where the government's discretion could, if left unregulated, be abused in future cases to tread on First Amendment interests. *Stanford*, 379 U.S. at 485.

b. Under *Carpenter*, the Fourth Amendment requires a warrant to

intrude on the associational rights threatened by location surveillance.

This Court's precedents concerning location-tracking, in particular, provide the appropriate approach to the analysis—and they reflect the attention to First Amendment interests that the Lynch concurrence gives short shrift. Having long recognized as a general matter that "[a]wareness that the government may be watching chills associational and expressive freedoms," *Jones,* 565 U.S. at 416 (Sotomayor, J., concurring), this Court affirmed in *Carpenter* that those confidential associations remain entitled to Fourth Amendment protection—and in particular the shelter of the warrant requirement—when reflected in an individual's "particular movements." 138 S. Ct. at 2217. After all, "[a] person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, 'what [one] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.'" *Carpenter*, 138 S. Ct. at 2217 (quoting *Katz v. United States*, 389 U.S. 347, 351–52 (1967)).

In particular, under *Carpenter*, the government intrudes on a reasonable expectation of privacy when it gathers information that "provides an intimate window" into an individual's "associations," *id.* at 2217 (citation omitted), information the citizen has "no way to avoid leaving behind," *id.* at 2220, and which new technology allows the government to gather where, historically, analogue surveillance would have been "difficult and costly and therefore

rarely undertaken," *id.* at 2217 (citation omitted).[4] The recording of eight months of footage of Petitioner's private residence from a surreptitiously installed pole camera plainly qualifies.

For one, as discussed above, persistent and targeted surveillance of the home will predictably expose a range of confidential associations, including reporter-source contacts. And to authorize targeted, around-the-clock pole camera surveillance of an individual's front door is to stake out an act—entering and exiting the home—as involuntary as owning a cell phone. A person must go out into the world not only to fulfill basic needs, but also to reap the benefits that participation in public life may bring. As this Court emphasized recently, the Constitution defends privacy in association in the first place to promote "[e]ffective advocacy of both public and private points of view." *Ams. for Prosperity*, 141 S. Ct. at 2382 (citation omitted). A reporter cannot gather the news exclusively from the comfort of a living room. And the Crown, for that matter, rummaged through John Wilkes' home for the paper he planned to go out and

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[4] Different considerations would be implicated in defining an individual's reasonable expectations of privacy as against actors *other* than the government in, say, the context of the privacy torts. "[T]he Fourth Amendment imposes higher standards on the government than those on private, civil litigants," *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 604 n.7 (9th Cir. 2020), in part "[b]ecause of the special considerations involved in defining the private citizen's protection against intrusion by the government" and in part because the government, unlike a private citizen or member of the press, has no First Amendment information-gathering rights of its own to be weighed in the balance, *Sanders v. Am. Broad. Cos.*, 978 P.2d 67, 74 n.3 (Cal. 1999).

distribute, not a diary he planned to keep to himself. *See* Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1199 & n.82 (2016). At base, the right to confidential association would be of little use—to journalists or anyone else—if it protected only those who opt never to leave home or accept visitors.

Finally, there can be no serious dispute that the surveillance at issue would be practically impossible without the aid of developments in pole camera technology. Yet the Lynch concurrence nevertheless characterizes the long-term pole camera surveillance here as a type of "conventional surveillance technique[]"—akin to use of a "security camera[]"—that *Carpenter* did not "call into question." Pet. App. 92a (quoting *Carpenter*, 138 S. Ct. at 2220).

The analogy fails. Traditional security cameras can only coincidentally capture the associational activities that were the touchstone of *Carpenter*'s Fourth Amendment analysis—they can only serendipitously catch a reporter and a source meeting in a park, for instance. *See Carpenter*, 138 S. Ct. at 2220 (grouping security cameras with "other business records that *might incidentally* reveal location information" (emphasis added)). Here, of course, there was nothing incidental about what the camera captured. Law enforcement surveilled the Petitioner in a targeted, pervasive fashion, recording and storing every coming and going from her private residence for eight months. That constant, systematic, and technology-assisted stake-out opens just the sort of "intimate window into a person's life" for which *Carpenter* requires a warrant. 138 S. Ct. at 2217.

Similarly, it is hard to understand how the Lynch concurrence could conclude that the surveillance of Petitioner's home was permissible because it captured less than "an exhaustive picture of [her] every movement." Pet. App. 105a (quoting *Tuggle*, 4 F.4th at 524). True enough, the interactions and movements captured here were part of a larger whole. But the same could have been said of the collection of less than four weeks of GPS monitoring in *Jones*, which could only track the movement of the defendant's car, or the 127 days of cell-site location information in *Carpenter*, which were not granular enough to "reveal where Carpenter lives and works." *Carpenter*, 138 S. Ct. at 2232 (Alito, J., dissenting); *see also Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 342 (4th Cir. 2021) (en banc) ("The datasets in *Jones* and *Carpenter* had gaps in their coverage, too."). But in each case, this Court asked not what the degree of monitoring the government opted for *happened* to reveal, but what unregulated use of the technology would allow the government *systematically* to reveal.

And rightly so. The Fourth Amendment forbids the accumulation of "arbitrary power" in the first instance; the Constitution is not reassured by the suggestion that the government exercised arbitrary power responsibly in a particular case. *Carpenter*, 138 S. Ct. at 2214 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)); *cf. United States v. Stevens*, 559 U.S. 460, 480 (2010) ("[T]he First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*."). The First Circuit could deadlock as it did only by losing sight of the founding

insight that connects the First and Fourth Amendments—that "discretionary power given to messengers to search wherever their suspicions may chance to fall" is "totally subversive of the liberty of the subject." *Marcus*, 367 U.S. at 728–729 (quoting *Wilkes*, 19 How. St. Tr. at 1167). Under such a regime, the freedoms of speech and the press could not survive.

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The technology at issue in this case poses an untenable threat to confidential association, and with it the freedom to gather news. Too many lower courts have acquiesced in a framework that would give the government discretion to surveil citizens in the most constitutionally sensitive of locations without a quantum of suspicion—to keep, among other predictable targets, inquisitive reporters and suspected sources under constant supervision. The press could not, under that scrutiny, provide the vigorous check on government that the Constitution recognizes and protects. This Court should grant review to reaffirm that a warrant is necessary to protect the rights enshrined in the First Amendment from persistent, pervasive, targeted government surveillance. "No less a standard could be faithful to First Amendment freedoms." *Stanford*, 379 U.S. at 485.

CONCLUSION

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

Respectfully submitted,

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