

No. 23-

In the
Supreme Court of the United States

PRISCILLA VILLARREAL,

Petitioner,

v.

ISIDRO R. ALANIZ, SUED IN
HIS INDIVIDUAL CAPACITY, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

5HVSRRQGHQWV DUH SROLFH RIÀFHUV DQG SURV sent Petitioner Priscilla Villarreal to jail for asking a SROLFH RIÀFHU IRU IDFWV DQG WKHQ UHSRUWLQJ ZK YROXQWHHUG 7KRVH RIÀFLDOV SORWWHG WKH arrest not for any legitimate purpose, but to silence a vocal critic.

,Q D QLQH WR VHYHQ HQ EDQF GHFLVLRQ ZLWK IRXU G RSLQLRQV WKH)LIWK &LUFXLW KHOG WKH RIÀFLD LPPXQLW\ 7KH)LIWK &LUFXLW FRQFOXGHG LW ZD WR DUUHVW 9LOODUHDQ IRU URXWLQH QHZV UH 7H[DV IHORQ\ VWDWXWH QR ORFDO RIÀFLDO KDG 23-year history. In dissent, Judge Ho explained that the majority “treat[s] the First Amendment as a second- FODVV ULJKWµ DQG ‘FRQWUDGLFWVµ WKLV &RXUV “subject arrests to First Amendment scrutiny.” App.

D D 7KH)LIWK &LUFXLW·V GHFLVLRQ DOVR F PXOWLSOH FLUFXLWV WKDW KDYH KHOG RIÀFLDOV TXDOLÀHG LPPXQLW\ ZKHQ WKH\ XVH VWDWH VWD that criminalize undoubted First Amendment rights.

7KH TXHVWLRQV SUHVHQWHG DUH

1. Whether it obviously violates the First Amendment to arrest someone for asking government officials TXHVWLRQV DQG SXEOLVKLQJ WKH LQIRUPDWLRQ

:KHWKHU TXDOLÀHG LPPXQLW\ LV XQDYDLODEO RIÀFLDOV ZKR XVH D VWDWH VWDWXWH LQ D ZD\ violates the First Amendment, as decisions from the Sixth, (LJKWK DQG 7HQWK &LUFXLWV KDYH KHOG RU ZKH LPPXQLW\ VKLHOGV WKRVH RIÀFLDOV DV WKH)LIWK EHORZ

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% 7KH GHFLVLRQ EHZRZ LJQRUHV ERWK WK & RQVWLWXWLRQ DQG...6H26WLRQ .V WH[W	
C. The Fifth Circuit stands alone from LWV VLVWHU FLUFXLWV LQ DOORZLQJ RIÀ to shroud obvious First Amendment violations in state statutes	28
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PETITION FOR WRIT OF CERTIORARI

For months, the police chief, district attorney, and
 RWKHU RIÀFLDOV RI /DUHGR 7H[DV ORRNHG IRU I
 arrest Petitioner Priscilla Villarreal, a local journalist
 ZKR RIWHQ VKLQHV D OLJKW RQ JRYHUQPHQW D
 settled on arresting Villarreal because she asked a police
 RIÀFHU IRU IDFWV ZKLOH UHSRUWLQJ RQ WZR QHZV VW
 WKH RIÀFHU IUHHO\ VKDUHG ,Q VKRUW 9LOODU
 for basic journalism.

When Villarreal sued the Laredo officials under
 6HFWLRQ LW ´VKRXOG·YH EHHQ DQ HDV\ FDVH
 TXDOLÀHG LPPXQLW\ µ \$SS D +R - GLVVHQW
 QRW DFFRUGLQJ WR WKH)LIWK &LUFXLW 7KH G
 JRHV IDU EH\RQG JUDQWLQJ WKH /DUHGR RIÀFLD
 LPPXQLW\ ,W ´RSHQV E\ FODLPLQJ WKDW 'HIHQG
 KDYH WR FRPSO\ ZLWK ~~Wakali.~~ Id. at VW \$PHQGPHQW
 D /LWWOH FRXOG FODVK PRUH ZLWK IRXQGLQJ SU
 WKLW &RXUW·V SUHFHGHQW

Rather than affirm that arresting someone for
 SHDFHDEO\ DVNLQJ WKH JRYHUQPHQW D TXHVWLF
 violates the First Amendment, the Fifth Circuit majority
 erases the line “distinguish[ing] a free nation from a
 police state.” City of Houston v. Hill , 482 U.S. 451, 463
 ,W LPSHULOV MRXUQDOLVWV ZKR URXWL
 QRQSXEOLF LQIRUPDWLRQ IURP SXEOLF RIÀFLD
 ´D FRQVWLWXWLRQDOO\ FKRVHQ PHDQV IRU NH
 HOHFWHG E\ WKH SHRSOH UHVSQRVLEOH WR DOO
 WKH\ ZHUH VHOHFWHG ~~Hill v. Cabana, 384 U.S. 155~~
 \$QG LW LJQRUHV WKLW &RXUW·V ZDUQLQ
 ZKHQ D VHDUFK RU VHL]XUH GHFLVLRQ LQYROY
 speech, police, prosecutors, and judges must take strict

care not to trample First Amendment rights—a founding
 SULQFLSOH ERUQ ‘DJDLQVW WKH EDFNJURXQG RI
 XQUHVWULFWHG SRZHU RI VHDFK DQG VHL]XUH FRX
 LQVWUXPHQW IRU VWLÁLQMarQuis EHUW\ RI H[SUHVV
 Search Warrants of Prop., 367 U.S. 717, 729 (1961). The
)LIWK & LUFXLW·V GHFLVLRQ H[FXVHV RIÀFLDO
 WR FRQVLGHU ZKHWKHU SUREDEOH FDXVH UHVV
 expression, converting the Fourth Amendment from a
 IXQGDPHQWDO FKHFN RQ JRYHUQPHQW SRZHU LQ
 violate the First Amendment. This stark departure from
 EDVLF FRQVWLWXWLRQDO JXDUDQWHHV PHULWV WKH

6R WRR GRHV WKH)LIWK & LUFXLW·V FRQFOXVL
 RIÀFLDOV DFWHG UHDFRQDEO\ ZKHQ DUUHVWLQ
 routine journalism under a 23-year-old Texas statute
 ORFDO RIÀFLDOV KDG QHYHU HQIRUFHG \$SS
 DSSURDFK GLVVHQWLQJ -XGJH +R ZDUQHG ‘VS
 of the First Amendment,” creating a free pass for any
 RIÀFLDO ZKR XQHDUWKV DQ REVFXUH VWDWXWH W
 H[SUHVVLRQ D FULPH \$SS D ,W DOVR FRQÁLFV
 ·V WH[W ZKLFK SURYLGHV D UHPHG\ IRU FRQ
 violations “under color of any statute . . . of any State.”
 42 U.S.C. §1983.

Unlike the Fifth Circuit, several circuits have held
 TXDOLÀHG LPPXQLW\ GRHV QRW VKLHOG RIÀFLDO
 VWDWH VWDWXWHV LQ ZD\V WKDW XQPLVWDNDEO\ Y
 Amendment. E.g., Leonard v. Robinson, 477 F.3d 347, 361
 WK & LU Snider v. City of Cape Girardeau, 752
 F.3d 1149 ² WK & LU Kd

Lawrence v. Reed 406 F.3d 1224, 1232 (10th Cir. 2005)

HPSKDVLV DGGHG :KLOH ODZ HQIRUFHPHQW RIÀ
expected to be legal scholars, the Constitution demands
PRUH WKDQ EOLQGO\ HQIRUFLQJ VWDWH ODZV DJD
the First Amendment no doubt protects. So does this
&RXUW·V TXDOLÀHG LPPXQLW\ IUDPHZRUN

,Q GLVVHQW -XGJH :LOOHWW ZDUQHG WKDW
TXDOLÀHG LPPXQLW\ WR RIÀFLDOV ZKR 'HQIRUF:
LQ DQ REYLRXVO\ XQFRQVWLWXWLRQDO ZD\µ
SRVVLELOLW\³LQGHHG WKH RA DO RRUYG RAF

, Q WKH ZLWKGUDZQ SDQHO RSLQLRQ WKH)
ordered the clerk to certify to the Texas Attorney General
that the constitutionality of Texas Penal Code §

DIÀUPDWLRQ DQG SDUWLFXODUO\ GHVFULELQJ V
searched, and the persons or things to be seized.”

42 U.S.C. § SURYLGHV DV UHOHYDQW KHUH

‘(YHU\ SHUVRQ ZKR XQGHU FRORU RI DQ\ VWD
of any State . . . subjects, or causes to be subjected, any
FLWL]HQ RI WKH 8QLWHG 6WDWHV RU RWKHU SHU
jurisdiction thereof to the deprivation of any rights,
privileges, or immunities secured by the Constitution
DQG ODZV VKDOO EH OLDEOH WR WKH SDUW\ LQM
DW .O.D”Z

Texas Penal Code§ 39.06(c) and §1.04(7) are
reproduced at App. 191a–192a.

STATEMENT OF THE CASE

3ULVFLOOD 9LOODUUHDO LV ‘DUJXDDEO\ WKH PI
journalist in Laredo, Texas.”¹ .QRZQ WR KHU UHDSGHUV DV
‘/DJRUGLORFD μ VKH SXEOLVKHV D ZHDOWK RI
OLYHVWUHDPV DQG FRPPHQWU\ DERXW ORFDO

the crash. App. 213a. For both reports, private citizens

SURYLGHG 9LOODUUHDO ZLWK OHDGV \$SS D²

\$Q\ JRRG MRXUQDOLVW YHULÀHV IDFWV EHIRU

And like other local reporters, Villarreal routinely asks

/DUHGR SROLFH TXHVWLRQV ZKLOH UHSRUWLQJ V

213a, 223a, 241a–242a. So she contacted Laredo police

RIÀFHU %DUEDUD *RRGPDQ ZKR FRQÀUPHG WKH L

IRU 9LOODUUHDO·V VWRULHV DERXW WKH VXLFLG

App. 212a–213a, 218a–219a. With the facts Officer

*RRGPDQ YHULÀHG 9LOODUUHDO SXEOLVKHG K

´/DJRUGLORFD 1HZV µ

To further their plan to rein in Villarreal, District Attorney Alaniz, Assistant District Attorney Jacaman,

%XW PRQWKV DIWHU 9LOODUUHDO SXEOLVKHG K
about the public suicide and the car accident, the Laredo
SURVHFXWRUV DQG SROLFH RIÀFHUV HQJLQHHL
arrest under Section 39.06(c). App. 216a–220a, 223a–226a.
Each played a part. Assistant District Attorney Jacaman
DSSURYHG LQYHVWLJDWRU\ VXESRHQDV WDUJHW
UHSRUWLQJ ZLWK 'LVWULFW \$WWRUQH\ \$ODQL
\$SS D² D \$QG 2IÀFHU 5XLJ DVVHPEOHG WZR
ZDUUDQW DIÀGDYLVV ZLWK GLUHFWRQ DQG DSSURY

\$IWHU SRVWLQJ ERQG 9LOODUUHDO ILOHG
 KDEHDV FRUSXV DUJXLQJZDWFWDLRLOO\

invalid. App. 229a. A Webb County district court judge
 PDGH D EHQFK UXOLQJ JUDQWLQJ WKH ZULW ÀQGLQJ
 unconstitutionally vague. App. 230a.

In 2019, Villarreal sued the police and prosecutors
 responsible for her arrest under 42 U.S.C. §1983 for
 violating her First, Fourth, and Fourteenth Amendment

ULJKWV 7KRVH RIÀFLDOV PRYHG IRU GLVPLVV
 TXDOLÀHG LPPXQLW\ \$SS D² D \$ODQL] DQG
 DOVR DVVHUWHG DEVROXWH SURVHFXWRULDO LPI

district court denied. App. 118a. But the court granted
 WKH PRWLRQV WR GLVPLVV EDVHG RQ TXDOLÀHG
 102a, 128a, 137a, 145a.

On appeal to thp <005<00110003 (p)-48 Tm [(O)-T(t c)3t co13t

ZKDW KDSSHQHG KHUH 3ULVFLOOD 9LOODUU
SXW LQ MDLO IRU DVNLQJ D SROLFH RIÀFHU D

If that is not an obvious violation of the
&RQVWLWXWLRQ LW·V KDUG WR LPDJLQH ZK
be.

If the First Amendment guarantees the right to
`YHUEDOO\ RSSRVH RU FKDOOHQJH SROLFH DFWLRQ
risking arrest” as “one of the principal characteristics by
ZKLFK ZH GLVWLQJXLVK D IUHH QDWLRQ IURP D
WKHQ LW JXDUDQWHHV WKH ULJKW WR SHDFHDEC
TXHVWLRQV ZLWKRXW 482 U.S. at 162-63. U.UHVW
/LNHZLVH LI WKH JRYHUQPHQW FDQQRW KROG \$
FRQWHPSW IRU `VSHDN>LQJ@ RQH.V PLQG DOWK
ZLWK SHUIHFW JRRG WDVWH RQ DOO SXEOLF
FDQQRW WKURZ WKHP LQ MDLO IRU DVNLQJ TXHV
institutions. *Bridges v. California* , 314 U.S. 252, 270 (1941).

'HFDGHV DJR WKH &RXUW FRQÀUPHG WKDW '
ULJKWµ SURWHFWV XVLQJ 'URXWLQH QHZVSD
WHFKQLTXHV µ OLNH DVNLQJ SROLFH RIÀFHUV
DERXW FULPHV DQG SXEOLVKLQJ ZKDW WKH\ V
criminal sanction. Daily Mail , 443 U.S. at 99, 103-04
FRQFOXGLQJ UHSRUWHUV 'ODZIXOO\ REWDLQH
a juvenile murder suspect "simply by asking various
ZLWQHVVHV WKH SROLFH DQG DQ DVVLVWD
DWWRUQH\µ 7KDW LV H[DFWO\ ZKDW 9LOODU
It makes no constitutional difference if officials lack
DXWKRUL]DWLRQ WR YROXQWHHU LQIRUPDWLRQ
WR WKRVH TXHVWLRQV :KLOH WKH JRYHUQPHQW V

GLVVHQWLQJ -XVW DV WURXEOLQJ WKH GHFLVLRQ E
that Villarreal deserved no First Amendment protection
because she used a “backchannel source.” App. 3a,
19a-20a. But it cites no precedent from this Court in
support—because none exists.

, Q HYHU\ FDVH ZKHUH D JRYHUQPHQW RI
government body made even sensitive information
DYDLODEOH ZLWKRXW FRHUFLRQ RU VXEWHUIXJH
held the First Amendment protects the recipient and the
publisher. See Daily Mail , 443 U.S. at 99, 103–04 (name
RI MXYHQLOH P X F U G d a S t a t , 4 9 1 S U H F W
QDPH RI U D S h B r o a d W o r l d P . v . C o h n
8 6 QDPH RI GHFH DVHG UDSH YLF

VLJQLÀFDQFH 3XEOLF RIÀFLDOV KDYH QR OHJLV
SROLFLQJ QHZVSDSHUV RU RWKHU VSHHFK IRU

Bridges 8 6 D~~W~~ also Cohen v. California,
403 U.S. 15, 25 (1971). One might have recoiled ~~at~~

Florida Star ·V FKRLFH WR SXEOLVK D UDSH YLFWLF

the police made available, but the First Amendment
protected it. Florida Star 8 6 DW see also

Hustler Mag. Inc. v. Falwell

cause entirely on protected expression. As Judge Ho
RE V HUYHG WKH PDMRULW\ FRQFOXGHG 'WKDW 'HI
KDYH WR FRPSO\ ZLWK WaKaH.) d l at VW \$ PHQGPHQW
79a.

But First and Fourth Amendment concerns are not
VR GLVWLQFW 7KLV &RXUW KDV GHWDLOHG KRZ
the struggle for freedom of speech and press in England
ZDV ERXQG XS ZLWK WKH LVVXH RI WKH VFRSH F
DQG VHLJX UHRSR37USpat 724 (citing Fred.
S. Siebert, Freedom of the Press in England, 1476–1776
/DXUHGFHGOVHRAQ
1695–1763 see also Boyd v. United States, 116
U.S. 616, 625–27 (1886). That struggle resulted in major
YLFWRULHV IRU WKH SUHV RYHU JHQHUDO ZDUU
government critics, including Entick v. Carrington , a
case this Court branded “one of the landmarks of English
liberty.” Boyd 8 6 DW 2 FLWLQJ +RZ : •iÊœ (p>t

and Roaden involve the unconstitutional seizure of papers.

% X W L I R I I L F L D O V N Q R Z W K H \ P X V W H [H U F L V H
H [D F W L W X G H μ Z K H Q V H L] L Q J Z U L W L Q J V W K H \ N
H [H U F L V H W K H V D P H e r z k h a s e d v o n h e r L Q J D
expression. See Stanford 379 U.S. at 485.

7 K H) L I W K & L U F X L W D E V R O Y H G / D U H G R R I Ä F L
duty, relegating the First Amendment to the background.
, W G L G V R E \ P L V U H D G L Q J S a u s e L V & R X U W . V U X O L
Bauer Z K L F K U H Y H U V H G D J U D Q W R I T X D O L Ä H G
W R R I Ä F H U V Z K R K D U D V V H G V R P H R Q H N Q H H O L
The majority cited Sause to propose that courts can
resolve First Amendment claims solely through a Fourth
Amendment lens because “First and Fourth Amendment
L V V X H V P D \ E H L Q H [W U L F D E O H μ \$ S S D T X R W
957, 959 (2018)). But Sause suggests no such thing. Rather,
Sause U H D I Ä U P V F R X U W V F D Q Q R W L Q V X O D W H S R O L F H
First Amendment scrutiny. Sause

“The First Amendment . . . VHHNV QRW WR HQVXUH ODZIXO
authority to arrest but to protect the freedom of speech.”
Nieves v. Bartlett, 139 S. Ct. 1715, 1731 (2019) (Gorusch,

VKH VXHG EHFDXVH /DUHGR RIÀFLDOV VHQW K
DVNLQJ D SROLFH RIÀFHU TXHVWLRQV DQG VKD
RIÀFHU YROXQWHHUG³VRPHWKLQJ WKH)LUVW
undeniably protects. SeeSection I.A, supra.

\$ UHDVRQDEOH RIÀFLDO ZRXOG KDYH NQRZQ
EDVH SUREDEOH FDXVH VROHO\ RQ 9LOODUUHDO·V HJ
Amendment rights. SeeSection I.B, supra see also Mink
v. Knox,) G ² WK &LU DIÀUPLQJ
DQ RIÀFLDO 'PD\ QRW EDVH KHU SUREDEOH FDXVH
RQ DQ ¶XQM XVWLÀDEOH VWDQGDUG · VXFK DV V
E\ WKH)LUVW \$PHQGWRU\ UnitedTXRWLQJ
States 8 6 1RU ZRXOG WKH UHDVRQDEO
RIÀFLDO KDYH SXUVXHG DUUHVW ZDUUDQWV X
describing routine journalistic acts, because it “created
WKH XQQHFHVVDU\ GDQJHU MaileyDQ XQODZIXO DU
v. Briggs

e.g, Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748, 761 (1976).

/LNHZLVH UHDVRQDEOH RIÀFLDOV NQRZ WKH\ FDQQ
UHSRUWHUV DQG RWKHU FLWL]HQV ZKR DVN IR

ZKHQ RIILFLDOV SODLQO\ YLRODWH WKH)LUY
`\$IWHU DOO VRPH WKLQJV DUH VR REYLRXVO\
WKH\ GRQ·W UHTXLUH GHWDLOHG H[SODQDWLRQ
WKH PRVW REYLRXVO\ XQODZIXO WKLQJV KDS
that a case on point is itself an unusual thing.'Browder
v. City of Albuquerque, 787 F.3d 1076, 1082 (10th Cir.
* RUVXFK - IRU WKH PDMRULW\ 9LOODUU
ÀWV WKDW ELOO

This Court has corrected the Fifth Circuit more than
RQFH IRU JUDQWLQJ TXDOLÀHG LPPXQLW\ WR
obviously violated the Constitution. Hope 8 6 DW
Taylor , 592 U.S. at 9. It sho.s BT /TT0 1 Tf -0.006 Tm44 T90.7 (<0B52>1(ge)]T4 (c

TXDOLÀHG LPPXQLW\ VWDQGDUG SXWV WKH)LIWK
ZURQJ VLGH RI WKH &RQVWLWXWLRQ 6HFWLRQ
its sister circuits. This Court should intervene to reject
WKH)LIWK &LUFXLW·V XQWHWKHUHG VWDQGDUG

7KH)LIWK &LUFXLW LPSRVHV WZR QHZ EDU
6HFWLRQ SODLQWLIIV VXLQJ RIÀFLDOV ZKR W
of First Amendment rights into a crime. First, plaintiffs
PXVW VKRZ D)RXUWK \$PHQGPHQW YLRODWLRQ
officer for the First Amendment violation. App. 10a.
Judge Ho explained the rule “spells the end of the First
\$PHQGPHQW μ EHFDXVH ´>D@OO WKH JRYHUQPHQ
to do is to enact some state statute or local ordinance
IRUELGGLQJ VRPH GLVIDYRUHG YLHZSRLQW³DQG WKHQ

Michigan v. DeFillippo , 443 U.S. 31, 38 (1979). Rather,
 ZKHQ RIÀFLDOV HQIRUFH VWDWXWHV LQ REYLRXVO\
 ZD\V TXDOLÀHG LPPXQLW\ LV QR VKLHOG 7KLV SU
 WKH KLVWRULFDO DYDLODELOLW\ RI GDPDJHV
 ZLHOGHG VWDWH VWDWXWHV DJDLQVW FOHDU FR
 E.g., Myers 8 6 DWNixon²v. Herndon , 273
 U.S. 536, 540–41 (1927) (reversing dismissal of damages
 FODLP EDVHG RQ VWDWH RIÀFLDOV UHO\LQJ RQ
 Texas statute to deny voting rights, “because it seems to
 us hard to imagine a more direct and obvious infringement
 of the Fourteenth [Amendment].”).

Heien DGGUHVV)LUVW \$PHQGPHQW ULJKWV RU
 immunity, let alone the obvious unconstitutionality of a
 months-long operation to jail a local reporter for asking
 SROLFH TXHVWLRQV ,I '>W@KH)RXUWK \$PHQGP
 only reasonable mistakes," Heien, 574 U.S. at 66, then it
 GRHV QRW WROHUDWH DUUHVWV ZKHUH WKH VROH E
 cause is the exercise of a familiar First Amendment
 ULJKW 7KH)LIWK &LUFXLW·V FRQWUDU\ VWD
 WKH FRQVWLWXWLRQDO GXW\ RI RIÀFLDOV WR

to criminalize undoubted First Amendment rights. Snider v. City of Cape Girardeau, 752 F.3d 1149 (8th Cir. 2014).

In Snider WKH (LJKWK & LUFXLW GHQLHG TXDOLÀHG WR DQ RIÀFHU ZKR DUUHVWHG D FLWL]HQ IRU WU \$PHULFDQ ÁDJ DQG VKUHGGGLQJ LW ZLWK D NQLIH hated the United States.” Id. DW 7KH RIÀFHU OLNH WKH /DUHGR RIÀFLDOV LQYRNHG DQ DXWKRUL]LO ‘SURKLELWLQJ ÁDJ GHVHFUDWLRQµ DQG FRQYLG PDJLVWUDWH WR LVVXH ~~in applying this~~ HVW ZDUUDQW &RXUW·V ~~Malley v. Briggs~~ to the Eighth Circuit explained, “[a] reasonably competent officer in [the RIÀFHU·V@ SRVLWLRQ ZRXOG KDYH FRQFOXGHG QF should issue for the expressive conduct . . . Although it LV XQIRUWXQDWH DQG IDLUO\ LQH[SOLFDEOH WK not corrected by the county prosecutor or the magistrate MXGJH QR ZDUUDQW VKRXOG KDYH EHHQ VRXJKV place.” Id. at 1157.

Not only does Snider KDUPRQL]H ZLWK LWV VLVWHU FLUFXLWV· ~~Cebaldez, Jordan, and Mink~~, but it DOVR VKRZV KRZ WKH)LIWK & LUFXLW·V UXOH JUDG LPPXQLW\ LI RIÀFHUV REWDLQ DQ DUUHVW ZDUU FRQÁLFWV ZLWK WKLW ~~Malley v. Malley~~·V GHFLVLRQ LQ

danger even more. See App. 51a (Higginson, J., dissenting)

H[SODLQLQJ KRZ WKH)LIWK &LUFXLW PDMRUL
9LOODUUHDO·V DOOHJDWLRQV DERXW WKH /DUHG
DQG PLVOHDGLQJ DUUHVW ZDUUDQW DIÀGDYLVW

Had the reasoning of the Sixth, Eighth, and Tens D á†) 00a, 00 I À G W0 p

be arrested for something. If the state could use these
First Amendment liberties” Nieves, 139 S. Ct. at
1730 (Gorsuch, J., concurring in part and dissenting in
part). This case puts a face on that danger to the First

ODZV QRW IRU WKHLU LQWHQGHG SXUSRVHV EXW
ZKR YRLFH XQSRSXODU LGHDV OLWWOH ZRXOG

D ÀQH DZDLWV WKRVH ZKR SHUIRUP WKH 6W DU 6SD
ZLWK DQ LPSURSHU DPRXQW RI ´HPEHOOLVKPHQWµ RU
PXVLF µ 0DVV *HQ /DZVQFKKRUW† ZKHQ SXEOLF
RIÀFLDOV ZDQW WR WDUJHW D FULWLF WKH\ KDYH
RI VWDWXWHV IURP ZKLFK WR GUDZ

\$PHULFDQV KDYH WKHLU RZQ ZHDSRQ WR GHSC
WKRVH DEXVHV RI SRZHU 6HFWLRQ %XW WKH)LIWK
GHFLVLRQ WKZDUWV 6HFWLRQ .V UHPHG\ IRU
First Amendment Violations Code M`a SB H0.9 (l)14.9 (n5 <0.9 8001D>-67.5 <0003e

W KH DUUHVW ZDUUDQW DIÀGDYLVV KLQWHG DW
W KUHDWV EULELQJ RIÀFHUV RU GRLQJ DQ\WKL
unprotected speech or independently illegal conduct.
1RU GRHV WKL V FDVH LQYROYH GLIÀFXOW VSOL
GHFLVLRQV LW LQYROYHV RIILFHUV 'VLWWLQ
GUDIWLQJ DIÀGDYLVV µ \$SS D +R - GLVVHQ

5DWKHU WKDQ DOORZ W KH)LIWK &LUFXLW.
HURGH IRXQGLQJ SULQFLSOHV WKL V &RXUW·V)LUVV
jurisprudence, and Section 1983 all at once, the Court
should grant certiorari and make clear that Americans
KDYH D FDXVH RI DFWLRQ ZKHQ RIÀFLDOV DEXV
codes to trample First Amendment rights.

CONCLUSION

For all these reasons, the Court should grant
certiorari.¹⁰

10. : KLOH WKL V FDVH ZDUUDQWV UHYLHZ JLYHQ
and recurrence of the issues involved, the Court at the very least
VKRXOG JUDQW YDFDWH DQG UHPDQG RQ 9LOODUUHDO.
UHWDO LDWLRQ FODLP ZKLFK VKH SOHDGHG DORQJVLG
Amendment violation claim, App. 230a–237a), particularly if
the Court reverses in Gonzalez v. Treviño No. 22-1025 (argued
Mar. 20, 2024). Reversal in Gonzalez ZRXOG EHDU RQ VRPH RI W KH
issues here, as Villarreal alleged objective evidence of retaliation
making probable cause irrelevant. See Nieves 139 S. Ct. at 1727.
)RU LQVWDQFH VKH DOOHJHG KRZ ORFDO RIÀFLDOV KD
6HFWLRQ F LQ W KH ODZ·V \HDU KLVWRU\ LQFO
ORFDO MRXUQDOLVWV DQG PDQ\ RWKHUV ZKR DVN /DU
LQIRUPDWLRQ DQG SXEOLVK ZKDW WKRVH RIÀFLDOV VKDU
241a–242a. As Judge Higginson explained, “there could be no
better example of a crime never enforced than this one.” App. 55a.

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