FILED
SUPREME COURT
STATE OF WASHINGTON
9/24/2021 11:08 AM
BY ERIN L. LENNON
CLERK

**Supreme Court No. 99901-5**
**King County Superior Court**
**No. 21-2-02468**

**SUPREME COURT OF THE STATE OF WASHINGTON**

JANE AND JOHN DOES 1 through 6,

Appellants,

v.

SEATTLE POLICE DEPARTMENT and the SEATTLE POLICE DEPARTMENT OFFICE OF POLICE ACCOUNTABILITY,

and

JEROME DRESCHER, ANNE BLOCK, SAM SUEOKA, and CRISTI LANDES

Appellees.

# BRIEF OF THE NATIONAL POLICE ACCOUNTABILITY PROJECT AS AMICUS CURIAE SUPPORTING APPELLEES AND DISCLOSURE

Ryan D. Dreveskracht
Gabriel S. Galanda
GALANDA BROADMAN, PLLC
P.O. Box 15146
Seattle, WA 98115
(206) 557-7509
ryan@galandabroadman.com
gabe@galandabroadman.com

Jim Davy
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org

Lauren Bonds
NATIONAL POLICE ACCOUNTABILITY PROJECT
2022 St. Bernard Ave., Suite 310
New Orleans, LA 70116

Counsel for *Amicus Curiae*

September 24, 2021

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page(s)**

**Cases**



**Other Authorities**

## TABLE OF AUTHORITIES—continued

**Page(s)**

## INTERESTS OF THE AMICUS CURIAE

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately six hundred attorney members practicing in every region of the United States and over a dozen members in Washington state. Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention.

NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as *amicus curiae* in cases, such as this one, presenting issues of particular importance for its members and their clients. Transparency is an essential prerequisite to accountability and attorneys who bring civil rights actions frequently rely on police disciplinary records obtained through public records requests to develop their client's case.

## STATEMENT OF THE CASE

*Amicus* adopts Appellees' statement of the case.

## SUMMARY OF ARGUMENT

At least six Seattle Police Department officers participated in the insurrection at the United States Capitol on January 6th, 2021.[1] That participation raises profound questions about the suitability of those officers to wield state-sanctioned deadly force or deprive members of the public

[1] *See* Transfer Order at fn. 1 (noting common use of "insurrection" and itself referring to the events at the Capitol on January 6, 2021 as "an attack").

of their liberty. This case need not even resolve those profound questions, however—it must merely affirm that the public itself should have the basic information sufficient to consider and discuss those questions out in the open. Having "[a]ccess to information regarding public police activity is particularly important because it leads to citizen discourse on public issues, the highest rung of the hierarchy of First Amendment values." *Fields v. City of Phila.*, 862 F.3d 353, 359 (3d Cir. 2017) (internal quotes omitted). Disclosure of the records requested here would serve not only the public discourse about the Capitol insurrection and police officer participation in it, but also the wider ongoing conversation about policing in Washington and elsewhere.

This Court should also consider the harmful long-term effects of shielding not only details about, but even the identity of officers who, in public, participated in an insurrection against the U.S. Government. First, substantial evidence demonstrates that public trust in law enforcement has deteriorated over time, particularly among people of color, and that lack of trust inhibits law enforcement's ability to fulfill its investigatory functions and promote justice. Declining to require disclosure here—possibly preventing the public from ever learning even the identities of the officers in question—would further erode that trust. When calls go out to members of the public to report criminal offenses, serve as witnesses, or otherwise work with police, evidence shows that the public will think twice—understandably wondering whether the officers seeking their collaboration have their best interests at heart.

Second, information about officers willing to violate Constitutional norms matters because it goes to the heart of the integrity of the criminal legal system. When officers swear out warrants, provide probable cause, and testify in criminal trials, the entire legal system depends on their credibility, and on attorneys protecting the rights of defendants through investigation, suppression, cross-examination, and other means. Protecting even these officers' identities strikes at the

integrity of the criminal legal system in the present and future and prevents advocates from correcting past injustices.

Third, shielding information about officer misconduct also undercuts budget and reform conversations, which can only be had from an informed posture if communities, elected officials, and stakeholders have full knowledge of what—and whom—dollars spent on policing ultimately fund. In particular, the resources expended to investigate, defend against, and settle claims of misconduct implicate policy questions about how to reduce complaints in the future. This is true regardless of one's normative position on police funding.

Finally, *Amicus Curiae* observes that sharing the identities of the insurrection participants should not cause this Court to worry that it will open the floodgates to eroding privacy protections for all public officials. Law enforcement officers have unique professional standing relative to our civil rights and liberties because they are the only public officials who have authority to interrogate, detain, and arrest community members, and the only government workers who carry weapons with which they can threaten or end someone's life. Especially where, as here, records sought relate specifically to an officer's perspective about when and under what circumstances to respond with violence, or an officer's willingness or propensity to disregard the U.S. Constitution, the public records in question differ substantially from records relating to other public employees. Accordingly, this Court can order disclosure without implicating the privacy rights of all public workers.

*Amicus Curiae* urges this Court to affirm the denial of Appellants' request for a preliminary injunction, and to order the disclosure of Appellants' identities and associated details of insurrection-related misconduct to the record requester Appellees.

## ARGUMENT

### I. Disclosing the identities of and details about insurrectionist police officers promotes law enforcement accountability and helps mitigate distrust between police and communities.

Distrust between communities and law enforcement has substantially increased in recent years, particularly among people of color. *See* Aimee Ortiz, *Confidence in Police is at a Record Low, Gallup Finds*, THE N.Y. TIMES (Aug. 12, 2020) (finding in the first time in 27 years, the majority of American adults do not trust the police).[2] This owes to numerous factors, including but not limited to increased availability of cell phone and body camera footage, high profile incidents of law enforcement officers killing unarmed people of color and other civilians, and the increasing propensity of officers to live outside of the communities in which they serve. *See, e.g.*, President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Office of Community Oriented Policing Services (May 2015);[3] *see also* Cynthia Conti-Cook, *A New Balance: Weighing Harms of Hiding Police Misconduct Information from the Public*, 22 CUNY L. REV. 148, 159 (2019) ("Many people avoid calling the police, even when in danger, wanting to avoid future encounters, especially after high-profile police violence."). But regardless of its origin, this distrust causes several problems for stakeholders across the criminal legal system. Among other effects, distrust inhibits law enforcement's ability to investigate and solve cases, heightens tension during ordinary interactions between community members and law enforcement, and generally undermines the ability of law enforcement to serve its ostensible function. *See* President's Task Force at 1 ("Decades of research and practice support

[2] *Available at*: https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html

[3] *Available at*: https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/115/attachments/original/1570474092/President-Barack-Obama-Task-Force-on-21st-Century-Policing-Final-Report-min.pdf?1570474092.

the premise that people are more likely to obey the law when they believe that those who are enforcing it have authority that is perceived as legitimate by those subject to the authority.").

Disclosure of the identities of the insurrectionist officers and details about their participation in the insurrection would contribute to efforts to rebuild trust between law enforcement and communities. *See* President's Task Force at 1 ("Law enforcement agencies should also establish a culture of transparency and accountability to build public trust and legitimacy."). To be sure, disclosure in this one case will not completely remedy a multi-faceted problem. But communities in Seattle and King County will have more reason to trust individual officers if the Seattle Police Department is open and honest about their officers who have demonstrated a willingness to willfully disregard the Constitution of the United States. Community members might have more confidence in their interactions with law enforcement if they need not wonder if the officer in question takes such a dim view of the Constitution and of their rights and liberties, and in the Department as a whole if they can trust that grave misconduct will come to light and result in consequences for the officer. *See* Sunita Patel, *Toward Democratic Police Reform: A Vision for "Community Engagement" Provisions in DOJ Consent Decrees*, 51 WAKE FOREST L. REV. 793, 802 (2016) ("when police processes are perceived as procedurally just, communities are more likely to cooperate with the police, and policing, in turn, is more effective"); *see Harms of Hiding*, 22 CUNY L. REV. at 158 ("The deflections, delays, and denials of responsibility for police violence cause more unrest and distrust."). Transparency here could also address one of the most pernicious double-standards that engenders suspicion and mistrust in law enforcement: law enforcement regularly attempts to portray victims of police violence as imperfect

or flawed, but often does not release any comparable information that exists about officers. *See Harms of Hiding*, 22 CUNY L. REV. at 154-56.[4]

Disclosure of these officers' identities and associated details about misconduct also fits into precedents that recognize the rights of nongovernmental actors, including concerned community members and investigative journalists, to help hold the criminal legal system accountable. The federal circuit that includes the state of Washington was the first to confirm the right of citizens to photograph or record officers. *See Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995). That public right to record police is vital, but bare recordings hardly vindicate the public's interest—the right to record matters in part because it "complements the role of the news media" in reporting on policing and the criminal legal system. *Fields*, 862 F.3d at 359. Investigative journalism serves an especially important function because it can identify persistent problems that undermine efficacy and trust in the system, and spur work by all stakeholders to address them. *See Harms of Hiding*, 22 CUNY L. REV. at 159 ("many people do not engage with the governmental oversight systems because they cannot learn what penalty, if any, an officer receives"); *see also id*. at 166 (discussing officers' inability to compare own discipline to other officers' discipline to assess discrimination or proportion). Preventing citizens and the news media from even learning these officers' names stymies those important functions and stops members of the public from identifying systemic issues with officers adhering to policy and formulating possible solutions. *See Citizens Police Data Project*, Invisible Inst.[5]

[4] "Following any violent encounter, the power of releasing a person's history of violence is indisputable. The police know this; they often unlawfully and recklessly release the sealed arrest history of people police have killed. . . . As the police push their narrative of events, they almost never reveal an officer's history of violence."

[5] *Available at*: https://perma.cc/HC4Z-JW3V.

Indeed, the Government itself benefits from transparency of these officers' identities and insurrection participation details for exactly that reason. The Government does not have any interest in protecting or facilitating civil rights violations. And it often takes transparency about officers who have or are likely to engage in such violations for everyone involved to recognize patterns of misconduct and "spur[] action at all levels of government to address police misconduct and to protect civil rights." *Fields*, 862 F.3d at 360 (internal quotations omitted). Transparency and public discourse, *see* section III, *infra*, related to police work actually "help them carry out their work." *Id*. Transparency in this context also would help prevent future violations across jurisdictions. Cities and towns throughout the country often unwittingly hire officers with concerning backgrounds who they otherwise would have rejected because they were not aware of the officers' prior misconduct. *See* William H. Freivogel and Paul Wagman, *Wandering cops shuffle departments, abusing citizens*, ASSOCIATED PRESS (Apr. 28, 2021) (noting that officers hired after prior dismissals "are subsequently fired and subjected to 'moral character' complaints at elevated rates relative to both officers hired as rookies and veterans with clean professional histories.").[6]

## II. Disclosure in this context protects the integrity of the criminal process.

Disclosure in this context benefits both the Government and members of the public because it provides vital protection for the integrity of the criminal legal process. Transparency about officers willing to violate Department policies or run roughshod over constitutional norms and rights protects the integrity of court proceedings in all criminal cases involving those officers. These protections take several forms. First, transparency about such officers can signal to

[6] *Available at*: https://apnews.com/article/michael-brown-business-police-reform-death-of-george-floyd-bfd018e3c12413f840482efca29ca6ba

defendants and their attorneys when to look especially hard at improperly-gotten evidence and, if necessary, argue for suppression during pretrial proceedings. Second, absent any indication that King County would decline to call one of the Doe officers to testify in court ever again, their identities would signal to criminal defense attorneys that these officers should be cross-examined in particular ways when testifying at trial. And finally, disclosure of the Doe officers' identities and associated details could help habeas attorneys identify wrongful convictions after the fact. Each of these functions of transparency provides vital protection to the integrity of the criminal process. Such accountability is especially needed given the pervasive racial bias and disproportionality that exists in Washington State's criminal "justice" system.[7]

First, the identity of officers who so willingly ignored constitutional norms would signal to defense attorneys that they should look especially hard at improperly-obtained evidence and, if warranted, seek suppression or other remedies. When a defense attorney knows an officer, whose work supports a criminal indictment, has been disciplined in the past for planting evidence, improperly obtaining a warrant, or otherwise engaging in investigatory misconduct, the attorney will be able to direct investigation into the circumstances giving rise to the indictment. *See* Robert Lewis & Noah Veltman, The Hard Truth About Cops Who Lie, WNYC News (Oct. 13, 2015) (describing 2,700 arrests by 54 officers *after* courts had deemed them non-credible).[8] Given their

---

[7] *State v. Gregory*, 192 Wn.2d 1, 22 (2018) (taking "judicial notice of implicit and overt racial bias against black defendants in this state."); *State v. Blake*, 197 Wn.2d 170, 192 (2021) (noting that Washington's simple drug possession statute "affected thousands upon thousands of lives, and its impact has hit young men of color especially hard."); *see also* Washington Supreme Court, Letter of June 4, 2020, *available at*: https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf ("We continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems.").

[8] *Available at*: https://www.wnyc.org/story/hard-truth-about-cops-who-lie/.

participation in an insurrection against the federal government despite their own oaths, department policies, federal laws, and democratic principles, the Doe officers may well transgress constitutional norms and individual rights in other ways that implicate exactly this consideration.

While disclosure of the Doe officers' identities could bear upon the case of any defendant, it is particularly important for indigent defendants. The vast majority of defendants plead rather than going to trial. *See, e.g.*, The United States Courts, About Federal Courts, Criminal Cases[9] (describing more than 90% of federal defendants resolving cases by pleading). And indigent defendants who cannot afford bond experience far greater pressure to plead while incarcerated pretrial. *See, e.g.*, Thea Johnson, *Crisis and Coercive Pleas*, 110 J. Crim. L. & Criminology Online 1 (2020).[10] Having clear information about officers during the pretrial investigatory and motions phase—prior to the plea—plays an especially important role in safeguarding the rights and liberties of indigent defendants. This is true regardless of the Doe officers' individual motivations for participating in the insurrection. But if the Doe officers' reasons for participating in the insurrection included racial animus or objection to hypothetical future implementation of allegedly defendant-friendly policies by now-President Biden, the importance of these records to indigent or minority defendants only heightens.[11]

---

[9] Available at: https://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases.

[10] *Available at*: https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1000&context=jclc_online.

[11] *See* Hannah Gais and Freddy Cruz, *Far-Right Insurrectionists Organized Capitol Siege on Parler*, Southern Poverty Law Center Hatewatch (Jan. 8, 2021) (describing key role of white nationalist groups in planning and participating in the insurrection); *see also* Jeremy B. Merrill and Jamiles Lartey, *Trump's Crime and Carnage Ad Blitz Is Going Unanswered on Facebook*, THE MARSHALL PROJECT (Sept. 23, 2020) (describing Trump Campaign's misleading ads characterizing President Biden as wishing to defund police, commenced nearly simultaneously with the deployment of federal forces to three cities including Seattle).

Second, for criminal cases that do go to trial, revealing the identity of the Doe officers would protect the integrity of proceedings by ensuring that law enforcement officers who testify at criminal trials face appropriate cross-examination. Some law enforcement conduct (or misconduct) implicates officers' credibility, and depriving defense attorneys of that information about prior conduct hamstrings them in a way that compromises the integrity of the proceedings. *See* Hard Truth About Cops Who Lie (describing more than 120 officers in New York City "whose testimony a state or federal judge called unbelievable"). The absence of transparency also exacerbates inequities because it affects some defendants more than others; defendants represented by more experienced or sophisticated attorneys may benefit from those attorneys' individual or institutional knowledge about officer witness cross-examination topics and material. Providing transparency not only ensures that defendants' liberty interests will be protected at trial, but also that defendants will not be punished for their choice of counsel.

Finally, disclosure in this context would protect integrity of the criminal justice system post-hoc. Many people are convicted and currently incarcerated because of the misconduct of officers, none of which ever emerged before or during their initial prosecutions. *See, e.g.*, Tom Jackman, *As prosecutors take larger role in reversing wrongful convictions, Philadelphia DA exonerates 10 men wrongfully imprisoned for murder*, THE WASHINGTON POST (Nov. 12, 2019). Transparency about officers who violated policies or otherwise participated in deprivations of individual rights often signals to attorneys and other advocates to scrutinize past convictions that may have been tainted by investigatory or other misconduct. *See* Hard Truth About Cops Who Lie ("The stakes couldn't be higher. When an officer distorts the truth . . . innocent people can go to prison.").

This interest belongs not only to wrongfully incarcerated individuals, but to the Government, the Police Department, and the legal system itself. Disclosure of the Doe officers' identities would help protect the finality of convictions, a key interest of the Government. *See, e.g.*, Lee Kovarsky, AEDPA's Wrecks: Comity, Finality, and Federalism, 82 TULANE L. REV. 443 (2007). By spurring earlier correction of pervasive misconduct, the Government is far less likely to face after-the-fact invalidation of convictions on the basis of misconduct it could have stopped. *See, e.g.*, Reversing wrongful convictions ("Cases involving corrupt officers have set off a string of exonerations in Philadelphia. After longtime homicide detective Philip Nordo was accused of intimidating and sexually assaulting witnesses, defense attorneys began revisiting Nordo's cases and sending them to the Conviction Integrity Unit. Three murder convictions worked by Nordo have now been vacated, and Nordo is in jail on sexual assault charges."). Catching and correcting pervasive issues earlier helps ensure that innocent people do not go to prison and that the Government can defend valid convictions later.

**III. Communities and elected officials can only make informed policy and budget decisions with knowledge of law enforcement misconduct and how departments handle it.**

Beyond promoting trust and accountability that can improve the efficacy of policing and the integrity of the criminal legal system, transparency about the Doe officers and the Department's response also has a vital role to play in our civic life and in our government. Robust civic deliberation about budgets and spending priorities relies on all stakeholders having informed perspectives on what public money funds. Elected officials and the people who vote for them need information about structural misconduct, policy violations, and officers' willingness to violate constitutional norms and rights because those abuses impact the public fisc. Transparency helps the public understand what its money funds, including whether that money has been spent well

under the circumstances. Taxpayers often have to fund defense costs, settlement awards, and paid leave for officers who engage in misconduct. Transparency in this context could help Seattle and its officials and residents make more informed decisions about public money, protecting taxpayers and ensuring that the City uses public funds responsibly.

Elected officials and voters must make difficult decisions about budgeting public money all the time. Communities and elected leaders deliberate carefully over those decisions and often have more things they would like to fund than money to pay for them. *See, e.g.*, Sam Levin, *These US cities defunded police: 'We're transferring money to the community'*, THE GUARDIAN (Mar. 11, 2021) (describing Seattle "maintain[ing] high rates of police spending in a budget that made cuts to affordable housing, parks, libraries, and transportation"). Cost pressures force deliberators to assess the efficacy of existing or proposed programs in reference to statistics and data, and to make decisions accordingly. Many publicly-funded programs have enormous quantities of government-disclosed data to help inform those deliberations—K-12 education, for example, has many statistics that advocates use to discuss education budgeting. *See, e.g.*, Seattle Public Schools, Data Access for Partners.[12] Policing, which takes up increasingly large shares of city budgets—including in Seattle—must not shield vital information from citizens and elected officials about what taxpayer money funds.

What data does exist suggests that violations of individual rights by officers willing to ignore the constitution end up costing cities like Seattle huge sums of money in civil rights lawsuits. But that information can be hard to come by, difficult to aggregate, and necessarily under-counts all law enforcement misconduct—often it only even comes out because of the dogged

[12] *Available at*: https://www.seattleschools.org/departments/communitypartnerships/data-access-for-partners.

efforts of investigative journalists to collect and contextualize it. *See* The Force Report, NJ.COM: PROJECTS & INVESTIGATIONS[13] (describing difficulty of assembling information on officer use of force, and contextualizing settlements or verdicts based on widely varying factors separate from the misconduct itself.). Stories like the NJ.com use of force report exist in no small part because of open public records laws, and reporters' pursuit of records through them.

The amount of money that cities like Seattle spend on lawsuits following misconduct that violates a person's civil rights undoubtedly bears on public discourse. Transparency of the identities of officers willing to engage in an insurrection, details about their participation, and the manner in which the Department has handled those officers might highlight both the cause and effect of misconduct on public budgets, and the shortcomings of relying on civil settlements or verdicts to track and deter misconduct in the first place. Robust investigative journalism, for example, can reveal further information about the Department protecting officers who engaged in conduct contrary to constitutional norms and individual rights. *See* Jan Ransom, *In N.Y.C. Jail System, Guards Often Lie About Excessive Force*, THE N.Y. TIMES (Apr. 24, 2021) (quoting a city councilman saying that discipline data "highlights how broken this process is and a need to make real efforts to reform it.");[14] *see also Harms of Hiding*, 22 CUNY L. REV. at 154 (discussing lack of transparency as depriving victims of law enforcement violence of key information in seeking redress).

To be clear: transparency of the Doe officers' identities would only be one small part of the information that must be considered in debates about police funding and public money. Transparency contributes to a more robust discourse about police funding overall, regardless of

[13] *Available at*: https://perma.cc/U99S-A2MC.
[14] *Available at*: https://www.nytimes.com/2021/04/24/nyregion/rikers-guards-lie-nyc-jails.html.

one's normative position. *See Fields*, 862 F.3d at 358 (observing that the "increase in the observation, recording, and sharing of police activity has contributed greatly to our national discussion of proper policing"). For people who might argue for reallocating police budgets to other uses, the identities and related work of the Doe officers could bolster an argument that the City pays too much money for ineffective enforcement that causes rampant civil rights violations. For others, the Doe officers' situation could provide important context to argue that for new or more funds for training programs, protocol reviews, or mental health other interventions. *See* Levin, *supra* (describing intense debate about police funding in Seattle). Transparency enhances the conversation and increases the likelihood that cities and governments ultimately make decisions from an informed posture.

All told, transparency of the Doe officers' identities and related insurrection misconduct would provide vital information to stakeholders on all sides of civic discourse around law enforcement. In the absence of transparency, those same conversations take place—but among people whose best intentions cannot make up for the information void they face.

## IV. Police are uniquely positioned relative to other government employees, which heightens the stakes for transparency of misconduct.

*Amicus Curiae* does not urge public disclosure in employment contexts lightly. But police like the Doe officers have two key distinguishing features even from other public employees that heighten the stakes for transparency here. First, law enforcement officers are the only public officials who have the power to interrogate, detain, and arrest people, and to carry weapons with which they may threaten or take people's lives. Second, unlike other public officials who generally violate individual rights in non-emergency situations and without state-sanctioned force, law enforcement officers violate individual rights in situations where they are constrained only by their

own internal respect for constitutional norms. Officers, unlike other public employees, can cite their own subjective sense of an emergency to justify force, and virtually assure themselves they will never face accountability. Not only do these distinctions cut in favor of transparency here, but they should also assuage any potential concern that a ruling here would open the floodgates to invasions of privacy for other public employees.

First, transparency concerning officers willing to transgress constitutional norms has unique importance because of the power officers wield. Officers also have the authority to use deadly force against people they encounter in public, up to and including taking someone's life, and may invoke this authority to justify unlawful actions. *See* Katherine J. Bies, Note, *Let the Sunshine In: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct*, 28 STAN. L. & POL. REV. 109, 142 (2017) ("police officers have the unique state-sanctioned ability to use force on other citizens"); *see also Harms of Hiding*, 22 CUNY L. REV. at 153. No other public officials have such power. Officers also have the power to restrict people's physical liberty by providing information for authorized warrants, by stopping people in public, and by arresting people even without warrants under some circumstances. *See Harms of Hiding*, 22 CUNY L. REV. at 153. Even arrests that ultimately do not lead to charges substantially restrict a person's liberty by resulting in booking and detention, and can have enormous effects on that person's life, including employment, housing, and family unity. *See* Megan Stevenson and Sandra G. Mayson, *Pretrial Detention and the Value of Liberty*, Virginia Public Law and Legal Theory Research Paper No. 2021-14 (Feb. 16, 2021), at 7; *see also Curry v. Yachera*, 835 F.3d 373, 377 (3d Cir. 2016) (describing individual detained pretrial because he could not post bail missing the birth of his son and losing his job). People detained for even a few days may lose employment, their homes, and

access to their children. *See id*.; *see also* Nick Pinto, *The Bail Trap*, THE N.Y. TIMES (Aug. 13, 2015).

Second, given those profound powers, transparency about the identity of law enforcement officers willing to transgress constitutional norms matters because the Constitution is the only thing that constrains law enforcement use of those powers. No other public officials are similarly situated. Merely by invoking an emergency situation, law enforcement officers' department policies generally allow use of force, without accountability after the fact. Law enforcement officers face civil liability only for misconduct that violates constitutional rights, and often not even then. *See Cole v. Carson*, 935 F.3d 444, 471 (5th Cir. 2019) (en banc) (Willet, J., dissenting) (describing qualified immunity as "a rights-remedies gap through which untold constitutional violations slip unchecked"). Where information about an officer directly relates to willingness to violate the Constitution, it should be public. *See Flanagan v. Munger*, 890 F.2d 1557, 1570 (10th Cir. 1989) (allowing access to discipline records because the "documents related simply to the officers' work as police officers."). Virtually no other public worker records implicate the same public interests, because virtually no other government employees have those powers. *See* Seth Stoughton, The Incidental Regulation of Policing, 98 MINN. L. REV. 2179, 2182 (2014) (describing unique role of police as reason to consider context in applying otherwise neutral regulations). Accordingly, this Court need not worry that a decision here will undermine privacy rights for workers with less power and authority.

## CONCLUSION

The insurrection of January 6th raises important questions about all participants, but about no participants more than about sworn law enforcement officers. Officers with the power to detain

and use force, constrained by individual constitutional rights, demonstrated a willingness to disregard the Constitution in service of their own personal preferences. Their proposal in this case, to shield their participation from ever becoming pubic and reject any accountability for it, would accelerate the decline of community trust in law enforcement, especially among people of color, and strike at the heart of a legal system that depends on officer credibility and respect for the rule of law. This Court should order disclosure, in service of protecting individual rights.

Respectfully submitted,

/s/ Ryan D. Dreveskracht
Ryan D. Dreveskracht
Gabriel S. Galanda
GALANDA BROADMAN, PLLC
P.O. Box 15146
Seattle, WA 98115
(206) 557-7509
ryan@galandabroadman.com
gabe@galandabroadman.com

/s/ Jim Davy
Jim Davy
ALL RISE TRIAL & APPELLATE
P.O. Box 15216
Philadelphia, PA 19125
(215) 792-3579
jimdavy@allriselaw.org

/s/ Lauren Bonds
Lauren Bonds
National Police Accountability Project
2022 St. Bernard Ave., Suite 310
New Orleans, LA 70116

Counsel for Amicus Curiae

Submitted this: September 24, 2021.

## CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the state rules covering word count because it contains 4,500 words, including footnotes and excepting tables and certifications not included under the rule.

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing document was served upon the following individuals:

KELLY H. SHERIDAN, VICTORIA E. AINSWORTH, & KAYLA HIGGINS
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
*Attorneys for the Appellants*

CAROLYN U. BOIES
Assistant City Attorney
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
*Attorney for Respondent City of Seattle*

JANET THOMAN
P.O. Box 80 2125
Maple Valley, WA, 98038

NEIL M. FOX
Western Ave. Suite 330
Seattle, WA, 98121
*Attorneys for Respondents/Cross-Appellants*

DATE: September 24, 2021

/s/ Wendy Foster
Wendy Foster
GALANDA BROADMAN, PLLC
P.O. Box 15146
Seattle, WA 98115
(206) 557-7509
wendy@galandabroadman.com

## GALANDA BROADMAN

## September 24, 2021 - 11:08 AM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 99901-5 |
| **Appellate Court Case Title:** | Jane & John Does 1-6 v. Seattle Police Department et al. |

**The following documents have been uploaded:**

- 999015_Motion_20210924110204SC994416_1603.pdf
  This File Contains:
  Motion 1 - Amicus Curiae Brief
  *The Original File Name was 9 24 21 NPAP Amicus Brief Motion.pdf*
- 999015_Other_20210924110204SC994416_0273.pdf
  This File Contains:
  Other - Amicus Curiae Brief
  *The Original File Name was 9 24 21 Doe NPAP amicus brief.pdf*

**A copy of the uploaded files will be sent to:**

- Carolyn.Boies@seattle.gov
- Marisa.Johnson@seattle.gov
- alice@galandabroadman.com
- asb@tbr-law.com
- bmr@tbr-law.com
- gabe@galandabroadman.com
- kim.fabel@seattle.gov
- nf@neilfoxlaw.com
- ryan@galandabroadman.com
- thomanlegal@gmail.com
- wendy@galandabroadman.com

**Comments:**

---

Sender Name: Wendy Foster - Email: wendy@galandabroadman.com
**Filing on Behalf of:** Ryan David Dreveskracht - Email: ryan@galandabroadman.com (Alternate Email: )

Address:
PO Box 15146
Seattle, WA, 98115
Phone: (206) 557-7509

**Note: The Filing Id is 20210924110204SC994416**