

No. 20-17285

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CORECIVIC, INC.,

Plaintiff-Appellant,

v.

CANDIDE GROUP, LLC
AND MORGAN SIMON,

Defendants-Appellees.

On appeal from the U.S. District Court
for the Northern District of California
Case No. 3:20-cv-03792-WHA (Hon. William Alsup)

**BRIEF OF THE CENTER FOR INVESTIGATIVE REPORTING, INC.,
CENTER FOR PUBLIC INTEGRITY, FIRST LOOK INSTITUTE, INC.,
THE MARSHALL PROJECT, INC., AND PRO PUBLICA, INC.
AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES
SEEKING AFFIRMANCE**

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DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* The Center for Investigative Reporting, Inc., Center for Public Integrity, First Look Institute, Inc., The Marshall Project, Inc., and Pro Publica, Inc. hereby certify that their independent organizations have no parent corporations and no publicly held corporation owns 10% or more of their stock.

/s/ Gregg Leslie

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Dated: October 22, 2021

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INTEREST OF *AMICI CURIAE*¹

The Center for Investigative Reporting, Inc. (d/b/a “Reveal”), founded in 1977, is the nation’s oldest nonprofit investigative newsroom. Reveal produces investigative journalism for its website, <https://www.revealnews.org>, the Reveal national public radio show and podcast, and various documentary projects. Reveal often works in collaboration with other newsrooms across the country. It has won numerous awards, including News Emmy awards, a George Foster Peabody Award, a Hillman Prize, Alfred I. duPont-Columbia University awards, George Polk Awards, and Edward R. Murrow Awards for investigative reporting, and it has been a finalist for the Pulitzer Prize in 2012, 2013, 2018, 2019, and 2020 as well as an Academy Award nominee in 2018.

The Center for Public Integrity, founded in 1989, produces free investigative journalism in the public interest. In 2019, the Center for Public Integrity has honed its investigative initiatives to highlight inequality ingrained in the culture and history of the United States. The Center for Public Integrity publishes on its website, publicintegrity.org, and works with local newsrooms to increase public engagement and awareness of important investigative coverage.

¹ *Amici* wish to thank Quinne Daoust, a student in the First Amendment Clinic at Arizona State University’s Sandra Day O’Connor College of Law, for her invaluable contributions in drafting this brief.

First Look Institute, Inc. is a nonprofit digital media venture that produces The Intercept, a digital magazine focused on national security reporting. The Intercept reaches a broad and diverse audience through investigative journalism, documentary filmmaking, and podcast production. The Intercept often reports on powerful interest groups that influence public health, government surveillance, and environmental concerns. First Look Institute also operates the Press Freedom Defense Fund, which provides essential legal support for journalists, news organizations, and whistleblowers who are targeted by powerful figures because they have tried to bring to light information that is in the public interest and necessary for a functioning democracy.

The Marshall Project, Inc. is a nonprofit journalism organization that concentrates reporting on criminal justice issues impacting communities across the nation. The Marshall Project provides researched, nonpartisan reporting on criminal justice reform, and works to encourage public discourse on this important social question. The Marshall Project has won two Pulitzer Prizes and many other awards since its founding in 2015. It works in partnership with national and local news organizations across the country.

Pro Publica, Inc. is an independent, nonprofit newsroom that produces investigative journalism in the public interest. It has won six Pulitzer Prizes, including the 2020 Pulitzer Prize for National Reporting. ProPublica is supported

primarily by philanthropy and offers its articles for republication, both through its website, propublica.org, and directly to leading news organizations selected for maximum impact. ProPublica has extensive regional and local operations, and a series of Local Reporting Network partnerships around the country.

As nonprofit newsrooms, *amici* are particularly vulnerable to meritless but costly strategic lawsuits against public participation (“SLAPPs”) brought to deter investigative reporting and deny the public valuable information. *Amici* have a strong interest in ensuring that they can continue to rely on state anti-SLAPP laws in federal court. *Amici* write to emphasize the substantive protections that anti-SLAPP laws provide to *amici* and other nonprofit news organizations that may not have the resources required to litigate against even meritless SLAPPs in either state or federal court.²

² Pursuant to Federal Rule of Appellate Procedure 29(a)(2), *amici* have obtained the consent of the parties to file this brief. Pursuant to Rule 29(a)(4)(E), *amici* state that no party’s counsel authored the brief in whole or in part or contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION & SUMMARY OF ARGUMENT

Nonprofit news organizations like *amici* produce original investigative journalism that holds powerful people and institutions accountable. These newsrooms produce fact-based, in-depth reporting on important and often contentious issues of public concern – ranging from corporate malfeasance to human rights abuses to the immigration and border issues at the heart of this case. Their coverage keeps the public informed, sparks necessary debate, and prompts community-driven reform. But reporting on diverse topics also inevitably attracts the ire of deep-pocketed interests that may attempt to silence nonprofit investigative reporting by filing meritless but expensive defamation lawsuits, or SLAPPs.

Accordingly, state anti-SLAPP laws provide substantial protections for these news organizations as they engage in this crucial work. Without anti-SLAPP protections, nonprofit newsrooms would be forced to spend more of their limited resources on combatting frivolous litigation, placing them at greater risk of facing financial devastation and resulting in a possible chilling of constitutionally protected reporting on important but contentious issues. Their journalists would also be forced to spend more of their time on litigation-related activities rather than investigating and breaking important news stories. Indeed, contrary to Plaintiff-Appellant's primary argument on appeal, California's anti-SLAPP law consists of

substantive protections affecting and arising out of First Amendment-protected activity, and it should be available to litigants in federal court. Thus, *amici* respectfully urge this Court to affirm the decision below.

ARGUMENT

I. Nonprofit investigative news organizations like *amici* that report on controversial issues provide an important public service but often become targets for litigants.

A. The news organizations represented here produce fact-based, in-depth investigative journalism.

The *amici* nonprofit newsrooms have broken and published news stories on a wide array of important but contentious issues, including federal immigration procedures and detention center contracts, dangerous working conditions within large corporations, and issues of police violence. *See, e.g.*, Aura Bogado, *The Disappeared*, Reveal (Feb. 18, 2020), <https://revealnews.org/article/the-disappeared>. This reporting often spurs more traditional news organizations, such as national newspapers and television stations with greater resources, to build on their coverage and generate further awareness. *See, e.g.*, Agnel Philip, *Report: Contractor Housed Separated Migrant Children in Unlicensed Office Building*, Ariz. Republic (July 6, 2018), <https://www.azcentral.com/story/news/politics/immigration/2018/07/06/report-contractor-housed-migrant-kids-unlicensed-phoenix-building/764725002> (published following Reveal's stories on detention of migrant children in a Phoenix, Arizona office building). These organizations

continue to receive accolades and awards for their skillful reporting and contributions to educating the public. *See, e.g., ProPublica and Partners Win Pulitzer Prize for MS-13 Coverage*, ProPublica (April 15, 2019), <https://www.propublica.org/article/pulitzer-winner-ms13-gangs-immigration-zero-tolerance>; *Center for Public Integrity Wins Pulitzer Prize for 'Panama Papers,'* Ctr. For Pub. Integrity (April 10, 2017), <https://publicintegrity.org/inside-publici/center-for-public-integrity-wins-pulitzer-prize-for-panama-papers>; *The Marshall Project Wins The Pulitzer Prize*, The Marshall Project (June 11, 2021), <https://www.themarshallproject.org/2021/06/11/the-marshall-project-wins-the-pulitzer-prize>.

These news organizations have made it their mission to confront the crises of the modern day by reporting on crucial beats that provide the public with the information necessary to hold public and private institutions accountable. This reporting serves an invaluable role in today's marketplace of ideas and has led to various public reforms and real-world changes:

- Immigration – Reveal's investigation into family separation and the treatment of migrant children led public officials to speak out about immigration policy changes. *See, e.g., Kids on the Line*, Reveal, <https://revealnews.org/topic/kids-on-the-line> (last visited October 22, 2021). ProPublica has contributed to uncovering corruption, failures,

and cruelties within U.S. Customs and Border Protection enforcement.

A.C. Thompson, *Inside the Secret Border Patrol Facebook Group*

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Marshall Project has produced original multimedia series on

immigration and the immigrant detention system, interviewing

policymakers and stakeholders and exploring all sides of these issues.

See, e.g., We Are Witnesses, The Marshall Project,

<https://www.themarshallproject.org/we-are-witnesses/immigration>

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Project (Sept. 24, 2019),

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- Industrial pollution – The Intercept published an investigative piece diving into DuPont's role in contaminating local water supplies with carcinogenic chemicals. Sharon Lerner, *The Teflon Toxin*, The

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- Deficient working conditions – Reveal analyzed internal Amazon records and found rising injury rates of warehouse workers and a pattern of underreporting injuries in order to evade backlash. Will Evans, *How Amazon Hid Its Safety Crisis*, Reveal (Sept. 29, 2020), <https://revealnews.org/article/how-amazon-hid-its-safety-crisis>.
Reveal also found a pattern of deficient safety standards in Goodyear tire plants using similar reporting techniques. Jennifer Gollan, *Treading Dangerously: Lax Safety Inside Goodyear's Tire Plants*, Reveal (Dec. 14, 2017), <https://revealnews.org/article/treading-dangerously-lax-safety-inside-goodyears-tire-plants>. Similarly, the Center for Public Integrity found hundreds of businesses illegally denied paid leave to workers during the COVID-19 pandemic. Alexia Fernández Campbell, *McDonald's, Marriott Franchises Didn't Pay Covid-19 Sick Leave. That Was Illegal.*, Ctr. for Public Integrity (Aug. 3, 2020), <https://publicintegrity.org/inequality-poverty->

opportunity/workers-rights/deny-paid-sick-leave-workers-coronavirus-pandemic-mcdonalds.

- Mismanagement of charities – Reveal published a three-part series investigating the practices of charity organizations across the United States. Based on data analysis, interviews with charity regulators, and digging through countless stacks of financial paperwork, the investigation found a pattern of fraud, mismanagement, and waste. Kris Hundley, *Part 1: Dirty Secrets of the Worst Charities*, Reveal (June 6, 2013), <https://revealnews.org/article/part-1-dirty-secrets-of-the-worst-charities>. ProPublica offers a free database of millions of charities' federal tax findings to allow the public to make informed decisions about donations. See Ken Schwenke et al., *NonProfit Explorer*, ProPublica, <https://projects.propublica.org/nonprofits> (last visited Oct. 22, 2021).
- Police misconduct – Reveal uncovered police misconduct in reporting and investigating rape cases which led to an audit of the Austin Police Department's procedures. Mark Greenblatt et al., *Austin Police Order Deeper Investigation After Audit Finds Misclassified Cleared Rape Cases*, Reveal (Jan. 18, 2019), <https://revealnews.org/blog/austin->

police-order-deeper-investigation-after-audit-finds-it-misclassified-cleared-rape-cases.

B. Nonprofit investigative news organizations typically ensure their journalism is held to the highest standards by engaging in rigorous prepublication review and adhering to strict ethical guidelines.

To ensure these stories are of the highest integrity, nonprofit newsrooms like *amici* have in-depth prepublication processes and ethical guidelines. For instance, every single story published by Reveal goes through an extensive and rigorous prepublication review process. This review process requires that reporters engage with Reveal’s editors to determine if a story was properly sourced, whether journalists asked all the necessary questions, and if stories properly protect source confidentiality. Prepublication review also entails intense fact-checking as well as rigorous legal review of any and all privacy, defamation, copyright, and other concerns. *Amici* have never shied away from a story that poses litigation risk but ensure that each story is properly bulleted to stave away litigation risk.

Furthermore, *amici* have all adopted extensive vetting procedures and codes of ethics which drive their investigative reporting and ensure that their stories are based on solid research and their processes are as transparent as possible. *See Ethics Guide*, Reveal, <https://revealnews.org/ethics-guide> (last visited Oct. 22, 2021); *see also, e.g., Editorial Policies*, Ctr. For Pub. Integrity, <https://publicintegrity.org/about/editorial-policies> (last visited Oct. 22, 2021);

Code of Ethics, The Marshall Project,

<https://www.themarshallproject.org/about/code-of-ethics> (last visited Oct. 22, 2021); *Code of Ethics*, ProPublica, <https://www.propublica.org/code-of-ethics> (last visited Oct. 22, 2021); *Policies*, The Intercept, <https://theintercept.com/policies> (last visited Oct. 22, 2021). Without anti-SLAPP protections, newsrooms would be required to undermine their own independent judgement in favor of avoiding costly litigation, which could lead to the curtailment of important public accountability reporting.

C. Stories that keep powerful actors accountable can often lead to higher litigation risk.

Despite careful legal review and strict adherence to ethics guidelines, investigative newsrooms are often at risk of litigation due to the nature of the stories they report. For nonprofit news organizations, these legal battles pose an even greater threat, either through “death-by-a-thousand litigations or titanic, bankruptcy-inducing damage verdicts.” Lili Levi, *The Weaponized Lawsuit Against the Media: Litigation Funding as a New Threat to Journalism*, 66 Am. U. L. Rev. 761, 761 (2017). A few recent examples of costly collisions between powerful interests and nonprofit news organizations over the First Amendment include:

- *Planet Aid, Inc. v. Reveal, Ctr. for Investigative Reporting*, No. 17-CV-03695 (MMC) (JSC), 2020 WL 1701960 (N.D. Cal. Apr. 8, 2020) – In

2016, Reveal published several stories on the international charity Planet Aid, tying the organization to an alleged cult and raising questions about the charity's spending.³ This exposé catapulted Reveal into a contentious, ongoing libel lawsuit amassing millions of dollars of legal fees over more than four years of litigation. *See* D. Victoria Baranetsky & Alexandra Gutierrez, *What a Costly Lawsuit Against Investigative Reporting Looks Like*, Colum. Journalism. Rev. (Mar. 30, 2021), https://www.cjr.org/tow_center/costly-lawsuit-against-investigative-reporting-looks-like.php. Without generous pro bono representation, Reveal would have been in real danger – litigation costs vastly exceeded Reveal's insurance coverage, and Planet Aid's \$25 million damages demand was twice Reveal's annual budget. This case is currently on appeal before the Ninth Circuit. *See Planet Aid, Inc. v. Reveal*, No. 21-15690 (9th Cir. Apr. 20, 2021).

³ *See* Matt Smith & Amy Walters, *USDA Said It Didn't Know Charity Had Problems. Documents Show Otherwise*, Reveal (Jan. 31, 2017), <https://revealnews.org/article/usda-said-it-didnt-know-charity-had-problems-documents-show-otherwise>; Matt Smith & Amy Walters, *Planet Aid's Ubiquitous Clothing Donation Boxes Aren't So Charitable*, Reveal (May 23, 2016), <https://revealnews.org/article/planet-aids-ubiquitous-clothing-donation-boxes-arent-so-charitable>; Matt Smith, Amy Walters & Kandani Ngwira, *US Taxpayers Are Financing Alleged Cult Through African Aid Charities*, Reveal (May 23, 2016), <https://revealnews.org/article/us-taxpayers-are-financing-alleged-cult-through-african-aid-charities>.

- *D’Amelio v. City of Norwalk*, No. FST-CV-19-6039468-S (Conn. Sup. Ct. 2019) – Nancy Chapman, a Norfolk, Connecticut native, began blogging and independently reporting on local news stories in 2010. Her nonprofit and self-published NancyonNorwalk.com covers issues important to the local community on a shoestring budget. When Chapman published a story detailing the 2014 DUI arrest record of 2018 Connecticut State Senate candidate Marc D’Amelio, she faced a lawsuit alleging false light invasion of privacy and infliction of emotional distress. The sheer cost of defending the litigation threatened to put Chapman’s small news outlet out of business, until Yale Law School’s Media Freedom and Information Access (“MFIA”) Clinic agreed to take Chapman’s case pro bono. Leah Ferentinos, *Yale Law Group Steps up to Defend NancyonNorwalk*, *The Hour* (Apr. 7, 2019), <https://www.thehour.com/opinion/article/Yale-law-group-steps-up-to-defend-NancyonNorwalk-13745109.php>. The MFIA clinic then worked quickly to prepare a motion for dismissal under Connecticut’s anti-SLAPP statute. D’Amelio subsequently withdrew the complaint. *See* Bob Welsh, *D’Amelio Withdraws Lawsuit Against Reporter*, *Nancy On Norwalk* (May 10, 2019), <https://www.nancyonnorwalk.com/damelio-withdraws-lawsuit-against-reporter>.

- *Reveal's Investigation into Indiana Amazon Distribution Center* – In 2020, Reveal published an investigative piece detailing the death of an Amazon worker at an Indiana distribution facility. Will Evans, *Behind the Smiles: Amazon's Internal Injury Records Expose the True Toll of Its Relentless Drive for Speed*, Reveal (Nov. 25, 2019), <https://revealnews.org/article/behind-the-smiles>. The report revealed Indiana Governor Eric Holcomb allegedly placated efforts to keep Amazon accountable after a worker died, at the same time that the state of Indiana was competing for the corporation's second headquarters. *Id.* Governor Holcomb issued a cease-and-desist letter to Reveal demanding the story's retraction, but Reveal stood by the accuracy of its reporting, despite the litigation risk. Arika Herron, *Gov. Holcomb Demands Correction, Retraction of Reveal Investigation Published in IndyStar*, *IndyStar* (Dec. 5, 2019), <https://www.indystar.com/story/news/politics/2019/11/29/governor-eric-holcomb-disputes-reveals-amazon-investigation/4332828002>.
- *SentosaCare LLC v. Lehman*, 58 Misc. 3d 1216(A) (N.Y. Sup. Ct. 2018) – In 2015, two freelance reporters published a story with ProPublica on the state of New York's lax oversight procedures of nursing home consultant SentosaCare. The piece questioned SentosaCare's limited

- vetting processes for nursing home owners despite extensive records of patient harm and health violations. *See Allegra Abramo & Jennifer Lehman, How N.Y.'s Biggest For-Profit Nursing Home Group Flourishes Despite a Record of Patient Harm*, ProPublica (Oct. 27, 2015), <https://www.propublica.org/article/new-york-for-profit-nursing-home-group-flourishes-despite-patient-harm>. When SentosaCare filed a defamation lawsuit after hearing of a possible follow-up article, ProPublica defended the freelance reporters and bore the financial cost of the litigation. Ian MacDougall, *Judge Dismisses Libel Suit Involving ProPublica Article*, ProPublica (Feb. 6, 2018), <https://www.propublica.org/article/judge-dismisses-libel-suit-involving-propublica-article>. The County Supreme Court dismissed the lawsuit against the reporters, finding the reporting to be a fair and true report.
- *Glocoms Grp., Inc. v. Ctr. for Pub. Integrity*, No. 17-CV-6854, 2018 WL 2689434 (N.D. Ill., June 5, 2018); 2018 WL 4590409 (N.D. Ill., Sept. 25, 2018) – In 2015, the Center for Public Integrity reported that a company barred from receiving World Bank-funded contracts was still receiving millions of dollars from U.S. agencies for other work. Katia Savchuk et al., *A Trail of Contracting Fiascos*, Ctr. for Pub. Integrity (Oct. 24, 2015), <https://publicintegrity.org/national-security/a-trail-of-contracting->

fiascos. The court dismissed the company’s lawsuit against the Center for Public Integrity, noting that the plaintiff “concedes the truth of much of CPI’s reporting.”

This turbulent modern history of lawsuits against members of the media signals a worrisome trend for news organizations, particularly as media organizations already operate on ever-waning budgets as technological changes, public media consumption, and ad revenue continue to shift. *See* Nicole J. Ligon, *Protecting Local News Outlets from Fatal Legal Expenses*, 95 N.Y.U. L. Rev. Online 280–302 (2020); *see also* *Newspaper Fact Sheet*, Pew Rsch. Ctr., <https://www.pewresearch.org/journalism/fact-sheet/newspapers/#newsroom-investment> (last updated June 29, 2021).

These dangers are even more pronounced for nonprofit newsrooms, which often rely on public donations and philanthropic support in order to continue producing investigative work. These newsrooms cannot guarantee that they will have sufficient resources to defend against retaliatory lawsuits, which can take years to reach a final disposition. In managing already-precarious budgets, existing resources for meaningful reporting would be wasted on litigation. Anti-SLAPP protections are crucial to all newsrooms as they allow them to focus on delivering researched and original reporting rather than siphoning resources to defend against meritless legal claims.

II. Anti-SLAPP laws provide crucial protections for nonprofit investigative news organizations.

A. Without anti-SLAPP laws, even meritless lawsuits can tax the financial health of nonprofit news organizations and deter future reporting on issues of public interest.

Protecting journalists from baseless lawsuits is essential to preserving their ability to hold accountable powerful people and institutions that too often weaponize the U.S. judicial system to discourage investigative reporting into controversial and sensitive topics. Even where a SLAPP has no hope of recovering damages, it may “silence individuals and groups that have publicly opposed the plaintiff’s actions or interests with the threat of costly, time-consuming, and potentially reputation-damaging litigation.” Carson Hilary Barylak, *Reducing Uncertainty in Anti-SLAPP Protection*, 71 Ohio St. L.J. 845, 846 (2010). News outlets and reporters attempting to investigate important issues often find themselves in wars of attrition against powerful people or institutions with arsenals of financial means and legal resources.

Furthermore, when reporters and news outlets are frequent targets of this litigation, its aftermath may negatively affect future reporting on contested issues as it distorts the cost-benefit analysis of news outlets in deciding what to investigate and publish. If anti-SLAPP protections cannot be relied upon in a given judicial forum, this failure may subsequently force news outlets to assess the value of a particularly controversial story in light of the ever-looming risk of a SLAPP.

See Trevor Timm, *Lawsuits Against the Media Aren't New. But Thiel Blueprint Sets a Disturbing Precedent*, Colum. Journalism Rev. (Sept. 7, 2016), https://www.cjr.org/opinion/thiel_gawker_ailen_trump.php. Consequently, the most important stories that need to be investigated and shared may never reach a broad public audience. The opportunity cost of fighting legal battles is impossible to quantify once news outlets shift time and resources away from investigating and reporting important stories. *See* D. Victoria Baranetsky & Christa Scharfenberg, *Federal Judge Dismisses Planet Aid's Lawsuit Against Reveal*, Reveal (Mar. 29, 2021), <https://revealnews.org/press/federal-judge-dismisses-planet-aids-lawsuit-against-reveal>.

B. Immigration is one topic that is vulnerable to litigation risk and requires anti-SLAPP protection.

Because topics like immigration, at issue in the underlying case, are also highly controversial, they too can attract costly litigation. This litigation disrupts fact-based reporting and impedes public access to vital information about complex current events.

Poll after poll confirms that the implications of America's immigration and border policies are at the forefront of many citizens' minds. *See, e.g., Key Topics: Immigration*, Gallup, <https://news.gallup.com/poll/1660/immigration.aspx> (last visited October 22, 2021) (in March 2021, 40% of Americans professed that they personally worried about illegal immigration "a great deal"). Immigration is both a

domestic and international issue, involving cultural, economic, environmental, diplomatic, and humanitarian concerns that trigger hotly contested debate and a variety of legislative responses. *See, e.g.*, Jeffery M. Jones, *Americans Remain Divided on Preferred Immigration Levels*, Gallup (July 23, 2021), <https://news.gallup.com/poll/352664/americans-remain-divided-preferred-immigration-levels.aspx>. The high political value the American public places on immigration issues demands a correspondingly robust and knowledgeable discourse on such matters. Nonprofit news organizations go beyond these statistics, covering the real impact of immigration policies and the experiences of communities on the border and in detention. *See, e.g.*, *Kids on the Line*, Reveal, <https://revealnews.org/topic/kids-on-the-line> (last visited October 22, 2021) (an ongoing investigation into family separation and the treatment of migrant children).

One of Reveal's recent investigations into a migrant detention facility operated by a federal contractor illustrates the lengths to which nonprofit newsrooms go to shed light on immigration issues, as well as the potential litigation risks that accompany such investigations. Just days after former President Donald Trump signed an executive order in June 2018 that purported to end his administration's "family separation" policy at the border, Reveal published an article that exposed a temporary migrant holding facility for children being

operated out of an office space in Phoenix, Arizona. *See* Aura Bogado, Ziva Branstetter & Vanessa Swales, *Defense Contractor Detained Migrant Kids in Vacant Phoenix Office Building*, *Reveal* (July 6, 2018), <https://revealnews.org/article/defense-contractor-detained-migrant-kids-in-vacant-phoenix-office-building>. *Reveal* was first tipped off about the migrant holding space by a woman living near the facility who recorded a video of young children being marshalled into the vacant office space, which lacked a kitchen and had only a few toilets. *Id.* *Reveal* reporters worked quickly to verify the facts and provide context about who was leasing the office space and for what purpose, obtaining lease agreements, interviewing witnesses, requesting information from state licensing departments and federal agencies, and reaching out to the contractor's representatives. *Reveal* found that the office space was being leased by MVM Inc., a Virginia-based defense contractor that has received over \$240 million to transport immigrant children since 2014. *Id.*

This story posed serious legal risk on multiple levels. The findings of the reports were very contentious – involving private parties and including statements about a well-funded private entity, statements that it initially denied. Even though this story posed substantial legal risk, *Reveal's* in-depth investigation provided the public with objective information about the real conditions and experiences of communities affected by immigrant holding facilities. *Reveal's* reporting further

ignited local community discussions about immigration detention facilities. Based on Reveal’s findings, local news organizations launched their own investigations and community leaders began to call for an inquiry into the office space. *See* Valeria Fernández, *Politicians Call for Investigation About Migrant Children Held in Vacant Arizona Office Building*, Reveal (July 10, 2018), <https://revealnews.org/blog/politicians-call-for-investigation-about-migrant-children-held-in-vacant-arizona-office-building>. Reveal’s investigation into the Phoenix office holding facility is still ongoing, including via Freedom of Information Act (“FOIA”) requests for details on government contracts with MVM.

Reveal’s reporting on the Phoenix detention facility highlights another key difficulty that can impede nonprofit investigative journalism: an inability to get comments on the record in controversial issues from directly involved parties. Reveal repeatedly reached out to MVM representatives for comments and clarifications about its role in immigrant detention in Arizona. But MVM was not forthcoming, initially insisting the office space was not a “shelter” only to admit it was a “temporary holding place” upon learning of the neighbor’s video. *Id.* As a result of a lack of transparency and forthright communication, Reveal has been required to look to other methods like public records law to uncover facts about migrant children.

Once journalists gain access to crucial records either through FOIA requests or other means, interpreting and analyzing such records can also be a herculean task. See Kimberly Cataudella & Alexia Campbell, *Undocumented Immigrants Can Get Licenses. ICE Can Get Their Data*, Ctr. for Pub. Integrity (July 13, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/immigration/undocumented-immigrants-licenses-ice-data>. While reporting on immigration issues, ProPublica received thousands of confidential records containing information that shed light into the inner workings of immigrant detention facilities. Melissa Sanchez et al., *As Months Pass in Chicago Shelters, Immigrant Children Contemplate Escape, Even Suicide*, ProPublica (Sept. 6, 2018), <https://www.propublica.org/article/chicago-immigrant-shelters-heartland-internal-documents>. The records revealed information on various immigrant detention facilities across the United States dating back various years and ranging in both content and type. The documents included “descriptions of serious incident reports filed with the federal government, caseworkers’ notes on family reunifications, employee schedules, daily rosters, internal emails and more.” *Id.* The reporters closely examined each of the records in order to contextualize and corroborate official statements released by facility operators and interviews with former detained immigrants. After processing such a high volume of sensitive documents,

any minor allegation of mischaracterization could very well have led to a costly legal battle.

The litigation risks to nonprofit newsrooms do not necessarily end with publication of the main investigation. Conducting effective watchdog journalism and holding bad actors accountable is an ongoing task demanding constant vigilance and follow-up reporting. For example, in 2020, The Intercept reported on a whistleblower's complaint that women held at a privately run immigration jail in Georgia were being sterilized without proper informed consent. *See* José Olivares & John Washington, *Whistleblower Reports High Number of Hysterectomies at ICE Detention Facility*, The Intercept (Sept. 15, 2020), <https://theintercept.com/2020/09/15/hysterectomies-ice-irwin-whistleblower>. The whistleblower also alleged the Irwin County Detention Center, which held migrants detained by U.S. Immigration and Customs Enforcement ("ICE"), was mishandling the COVID-19 pandemic. *See* José Olivares & John Washington, *Nurse at ICE Facility Blows the Whistle on Coronavirus Dangers*, The Intercept (Sept. 14, 2020), <https://theintercept.com/2020/09/14/ice-detention-center-nurse-whistleblower>. Nearly a year later, despite an announcement of the Irwin Detention Center's closure, The Intercept found that ICE continued to send detainees to the facility as federal pretrial detainees. *See* José Olivares & John Washington, *ICE Sends Detainees to Irwin Prison Despite Pledges to Close It*, The Intercept (June 3,

2021) <https://theintercept.com/2021/06/03/ice-irwin-closing-open-detainees>. Once investigative journalists expose injustices, they must continue to verify whether promised reforms have actually been enacted. As a result, follow-up reporting can place investigative journalists and their newsrooms in a precarious loop of litigation risk.

Despite the risks, *amici* and other nonprofit investigative outlets are committed to uncovering the truth on behalf of the public, including on beats like immigration that carry heightened risk of meritless litigation. For these vital and contentious stories to be told, it is crucially important that protections like anti-SLAPP statutes remain in place, including in federal court. At stake is the viability of *amici* and their nonprofit media peers, as well as the long tradition of American investigative journalism that seeks to root out corruption, malfeasance, and inequity in places of power.

CONCLUSION

For these reasons, *amici* join Defendants-Appellees in urging this Court to affirm the decision below.

Dated: October 22, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 29 and 32 and the Ninth Circuit's Local Rules because this brief contains 4,355 words, excluding the parts of the brief exempted.

Further, this brief complies with the typeface requirements and the type style requirements because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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