

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 First Circuit

**BRIEF OF MUSLIM PUBLIC AFFAIRS COUNCIL
AS *AMICUS CURIAE* SUPPORTING PETITIONER**

JOSHUA C. MCDANIEL

Counsel of Record

KELSEY M. FLORES

MATTHEW E. MYATT

PARKER W. KNIGHT III

HARVARD LAW SCHOOL

RELIGIOUS FREEDOM CLINIC

6 Everett St., Suite 5110

Cambridge, MA 02138

(617) 496-4383

jmcdaniel@law.harvard.edu

Counsel for Amicus Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTERESTS OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT.....	3
I. Resolution of the Fourth Amendment question here is important to religious adherents who have long been the target of abusive government surveillance.....	3
A. The government has a long history of invading the privacy of people of faith.	4
B. As modern technology enables even greater intrusion, the government continues to single out religious communities for surveillance.....	8
II. The decision below threatens the liberty and privacy of religious individuals.....	12
CONCLUSION	14

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Congregation 3401 Prairie Bais Yeshaya D’Kerestir, Inc. v. City of Miami, No. 22-21213-CIV-ALTONAGA/Torres, 2022 U.S. Dist. LEXIS 184119 (S.D. Fla. Oct. 6, 2022)</i>	11
<i>Dousa v. Dep’t of Homeland Sec., No. 19CV1255-LAB(KSC), 2019 WL 2994633 (S.D. Cal. Feb. 8, 2019)</i>	11
<i>Ex parte Mitsuye Endo, 323 U.S. 283 (1944)</i>	12
<i>FBI v. Fazaga, 142 S. Ct. 1051 (2022)</i>	9
<i>Florida v. Jardines, 569 U.S. 1 (2013)</i>	12
<i>Hassan v. City of New York, 804 F.3d 277 (3d Cir. 2015), as amended (Feb. 2, 2016)</i>	12
<i>People v. Weaver, 909 N.E.2d 1195 (N.Y. 2009)</i>	13
<i>Riley v. California, 573 U.S. 373 (2014)</i>	13
<i>Silverman v. United States, 365 U.S. 505 (1961)</i>	12
<i>United States v. Jones, 565 U.S. 400 (2012)</i>	13

United States v. Moore-Bush,
36 F.4th 320 (1st Cir. 2022).....2, 3, 4, 12

Other Authorities

471: *The Convert (2012)*, This American Life,
<https://perma.cc/AM9S-LXB9> (last visited
Dec. 20, 2022)14

Adam Goldman & Matt Apuzzo, *Inside the Spy
Unit that NYPD Says Doesn't Exist*, NBC
New York, Associated Press (Aug. 31, 2011),
<https://perma.cc/KJM3-9XYP>10

Calendar of State Papers Domestic: Charles I,
1633–4 Vol. 265 (John Bruce ed., 1863).....4

Christian Edmonds, *The Religious
Underpinnings of the Fourth Amendment*, 25
Tex. Rev. L. & Pol. 473 (2021)5

*Christian Pastor Targeted by DHS for
Ministering to Migrants Sues to End Illegal
Government Surveillance*, Protect Democracy
(July 8, 2019), <https://perma.cc/KNL5-GTFW>.....10

*Concessions and Agreements of West New Jersey
(Mar. 13, 1677)*, in *Sources of Our Liberties*
184 (Richard L. Perry & John C. Cooper eds.,
1978)5

Erica Goode, *F.B.I. Chided for Training That
Was Critical of Islam*, N.Y. Times (Sept. 16,
2011), <https://nyti.ms/3UCwU98>.....9

*Factsheet: The NYPD Muslim Surveillance and
Mapping Program*, Bridge, a Georgetown
University Initiative (May 11, 2020),
<https://perma.cc/X7RG-LP3L>8, 9, 10

- Kathryn Montalbano, *Government Surveillance of Religious Expression: Mormons, Quakers, and Muslims in the United States* (2019)6
- Keith Sprunger & Mary Sprunger, *Big Brother is Watching: FBI Surveillance of Antiwar Activities at Mennonite Colleges in the 1960s*, 92 *Mennonite Q. Rev.* 56 (2018)7
- Mari Payton et al., *Documents Reveal Border Agents Targeted U.S. Pastor Over Caravan Marriage Ceremonies*, NBC San Diego (Jan. 7, 2020), <https://perma.cc/4FGZ-WXGF>11
- Michael Barkun, *The FBI and American Muslims After September 11*, in *The FBI and Religion*10
- Michael Hodgetts, *Elizabethan Priest-Holes I: Dating and Chronology*, 11 *Brit. Cath. Hist.* 279 (1972)5
- Regin Schmidt, *The FBI and the Catholic Church*, in *The FBI and Religion*7, 8
- Saher Khan & Vignesh Ramachandran, *Post-9/11 Surveillance Has Left a Generation of Muslim Americans in a Shadow of Distrust and Fear*, PBS News Hour (Sept. 16, 2021), <https://perma.cc/4G6X-NW7F>14
- Sarah Imhoff, *Hoover's Judeo-Christians*, in *The FBI and Religion*8
- Sylvester A. Johnson, *Dreams and Shadows*, in *The FBI and Religion*7

The Muslim American Civil Liberties Coalition et al., <i>Mapping Muslims: NYPD Spying and its Impact on American Muslims</i> , CLEAR Project, CUNY School of Law, 11, https://perma.cc/XG7U-YHEU (last visited Dec. 20, 2022)	9, 10
Theodore Kornweibel, Jr., “ <i>If God Be for You, Who Can Be Against You?</i> ”, in <i>The FBI and Religion</i> (Sylvester A. Johnson and Steven Weitzman eds., 2017).....	6
William J. Cuddihy, <i>The Fourth Amendment: Origins and Original Meaning, 602–1791</i> (2009)	4, 5
Yasmeen Alamiri, <i>Watch: “Of Course We Were Supposed to Do That,” Bloomberg Says of Surveillance of American Muslim Community Post 9/11</i> , PBS News Hour (Feb. 27, 2020), https://perma.cc/9XRH-U9FK	12

INTERESTS OF *AMICUS CURIAE*¹

The Muslim Public Affairs Council is a nonprofit public affairs organization that has worked since its founding in 1988 to enhance American pluralism, improve understanding, and speak out on policies that affect American Muslims. Through engaging our government, media, and communities, MPAC leads the way in bolstering more nuanced portrayals of Muslims in American society and partnering with diverse communities to encourage civic responsibility.

MPAC submits this brief to highlight the broad implications of the First Circuit's decision for vulnerable religious groups who have all too often been the target of suspicionless government surveillance tactics. If left on the books, the decision below would allow the government to evade judicial scrutiny when subjecting religious minorities to around-the-clock surveillance in their homes and houses of worship. For people of all faiths, the decision below thus threatens not just their right to be free from unlawful searches and seizures, but their right to freely practice their religion.

INTRODUCTION AND SUMMARY OF ARGUMENT

By allowing law enforcement to surveil a home around the clock for months on end without getting a warrant, the decision below puts core Fourth

¹ No counsel for any party authored this brief in whole or in part, and no entity or person aside from *amicus curiae* and its counsel made a monetary contribution toward the brief's preparation. All parties were given 10 days' notice and have consented to this filing.

Amendment protections at risk. As Judge Barron noted, the government can now “acquire an instantly searchable, perfectly accurate, and thus irrefutable digital compendium of the whole of what visibly occurred over a period of the government’s choosing.” *United States v. Moore-Bush*, 36 F.4th 320, 341 (1st Cir. 2022) (Barron, C.J., concurring). The implications of that holding do not end with those engaged in criminal wrongdoing. They extend to all Americans. And, for reasons *amicus curiae* will explain, the First Circuit’s holding is especially troubling for religious minorities.

When it comes to overweening government surveillance, people of all faiths have long had targets on their backs. From Quakers in colonial times to Rev. King and Mennonite students in the 1960s, the government has brazenly violated the privacy and civil liberties of religious outsiders time and time again. And sadly, history keeps repeating itself. In the wake of the 9/11 attacks, law enforcement officials have gone to almost any length to surveil and spy on Muslims in their homes, mosques, student groups, and places of business.

Given this history, minority faiths depend on not only the First Amendment but the Fourth Amendment to protect their rights to freely exercise their religion. In the first place, the Fourth Amendment protects their ability to pray, worship, meditate, and study in their homes without government intrusion. And it also protects the sanctity and privacy of their mosques, synagogues, churches, and other houses of worship. Wherever believers worship, they expect to be shielded by the Fourth Amendment.

By greenlighting prolonged, 24/7 surveillance of homes without probable cause or a warrant, the decision below threatens the rights of religious adherents to be secure in their homes and houses of worship. Without any suspicion of wrongdoing, the government can now double down on its past abusive tactics and watch the homes of people of faith for months or years on end. Indeed, by allowing this kind of surveillance of a home, where Fourth Amendment protection is at its zenith, the First Circuit's decision would almost certainly permit the same dragnet methods on adherents' communal houses of worship. As in times past, religious minorities would not be free to gather or worship—even in their own homes—without potentially being watched.

To protect the Fourth Amendment rights of all citizens, including those like *amicus* who have been the target of abusive surveillance tactics, the Court should grant the petition and hold that prolonged, nonstop surveillance of a home requires a warrant.

ARGUMENT

I. Resolution of the Fourth Amendment question here is important to religious adherents who have long been the target of abusive government surveillance.

In seeking to support the First Circuit's decision here, Judge Lynch reasoned that the government probably wouldn't be able to monitor everyone constantly because setting up "millions of pole cameras * * * would entail such an enormous expenditure of scarce resources as to ensure that [it] would never happen." *Moore-Bush*, 36 F.4th at 366 & n.39 (Lynch, J.,

concurring). Even if that were true, though, the question would then become *who* the government will choose to surveil with its “targeted use of limited government resources.” *Id.* at 361. Time and again, the answer to that question has been religious communities.

A. The government has a long history of invading the privacy of people of faith.

Government surveillance of religious believers goes back centuries—to well before America’s founding. In fact, the English concept of an “unreasonable search and seizure” developed alongside the Crown’s attempts to surveil and quash religious dissent following the Reformation and Act of Supremacy. See generally William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning, 602–1791*, 4, 7–9 (2009) (noting that popular opposition to unreasonable searches ignited after searches were carried out against religious dissidents around 1580).

Before Englishmen asserted their right against unreasonable searches, the monarchy pummeled religious minorities with searches, often sanctioned by general warrants. See *id.* at 75–87. Those warrants were often sweepingly broad. One missive issued by the High Commission in 1634 targeted “Brownists, Anabaptists, Arians, Traskites, Familists, and some other sorts.” *Calendar of State Papers Domestic: Charles I, 1633–4 Vol. 265 at 537–59* (John Bruce ed., 1863). The order directed officers to “enter any house where * * * conventicles are held, and in every room thereof search for persons assembled and for all unlicensed books.” *Ibid.*

Even homes were not safe. Queen Elizabeth I oversaw a nationwide search to find and arrest Jesuit priests who were holding clandestine masses in recusants' homes. See Cuddihy, *supra*, at 75–80. These priests faced such frequent searches that houses throughout the English countryside built “priest holes” for the Jesuit missionaries to hide in, sometimes for days at a time. See Michael Hodgetts, *Elizabethan Priest-Holes I: Dating and Chronology*, 11 *Brit. Cath. Hist.* 279 (1972); see also Cuddihy, *supra*, at 84 (“In 1594, Father John Gerard survived for four days, wedged between two fireplace flues with little more than two biscuits for sustenance * * * .”).

The New World offered a possible escape. Because “promiscuous searches for assemblies of nonconformists of every stripe [had] bec[o]me the order of the day,” Christian Edmonds, *The Religious Underpinnings of the Fourth Amendment*, 25 *Tex. Rev. L. & Pol.* 473, 484 (2021) (quoting Cuddihy, *supra*, at 170)), many fled England to the New World for religious freedom. Yet even there, some colonies continued the English practice of using searches and seizures to suppress minority faiths. In New England, where Puritans dominated, “Quakers bore the brunt of general searches and seizures for religious control.” *Id.* at 485. In fact, Massachusetts law required law enforcement officials to search all homes and places where Quakers were suspected of having prohibited meetings. *Ibid.*

Despite the adoption of the Bill of Rights, government tactics of using surveillance to target religious groups carried through after the Union was formed. For example, attempting to root out polygamy in Utah, the federal government launched a multifaceted surveillance effort against members of the Church of

Jesus Christ of Latter-day Saints. See Kathryn Montalbano, *Government Surveillance of Religious Expression: Mormons, Quakers, and Muslims in the United States* 36 (2019). The government questioned children about their parents and encouraged families to testify against each other. See *id.* at 29. Marshals and “spotters” surveilled individuals to identify cohabitants. In some instances, informers trespassed on property to peer through bedchamber windows. See *id.* at 33–34.

In other cases, the government has used religion as a proxy to target a disfavored or “dangerous” idea. One example is the Justice Department’s effort to enforce selective service during World War I. Many African Americans who were dissatisfied with the racial status quo resisted the draft. But because the Justice Department lacked the resources necessary to scrutinize an entire racial group, it targeted leaders and members of the Church of God in Christ, a predominantly Black Pentecostal sect whose doctrine forbade the shedding of blood. In its investigation, federal agents “compromised objectivity by succumbing to popular fears and prejudices”—a theme that has since repeated itself with its investigation of other religions. See Theodore Kornweibel, Jr., “*If God Be for You, Who Can Be Against You?*”, in *The FBI and Religion* 32, 32–54 (Sylvester A. Johnson and Steven Weitzman eds., 2017).

Fears of draft evasion also prompted outsized surveillance of the American Friends Service Committee, a Quaker organization promoting peaceful alternatives to military service. Montalbano, *supra*, at 73, 80. For decades, FBI agents raided the organization’s meeting spaces and systematically reported on its members’ attendance at meetings, demonstrations, and vigils. *Id.* at 77, 83.

In the 1960s, the government targeted the Reverend Martin Luther King, Jr. and the Southern Christian Leadership Conference. See Sylvester A. Johnson, *Dreams and Shadows*, in *The FBI and Religion*, *supra*, at 168, 170. Seeking to quash grassroots activism and alleged communist ties in King’s circle, longtime-FBI Director J. Edgar Hoover tasked FBI agents with investigating King. *Id.* at 171. Agents listened in on King’s phone calls and wiretapped his home and hotel rooms as he traveled. *Id.* at 172–73. By 1967, the FBI had wiretapped all 10 phone lines at the Southern Christian Leadership Conference’s headquarters in Atlanta and recruited a paid informant from the conference’s staff. *Id.* at 182.

Around the same time, the government also targeted Mennonite students for their “radical” pacifist activism during the Vietnam War. Keith Sprunger & Mary Sprunger, *Big Brother is Watching: FBI Surveillance of Antiwar Activities at Mennonite Colleges in the 1960s*, 92 *Mennonite Q. Rev.* 5, 6 (2018). Under Hoover’s direction, FBI agents surveilled Mennonite university Bethel College through a network of undercover sources and informants. *Id.* at 20–23.

Even longtime partners of law enforcement weren’t immune. The Catholic Church and its members, for example, were long considered by the FBI “dependable allies in the struggle against communism.” Regin Schmidt, *The FBI and the Catholic Church*, in *The FBI and Religion*, *supra*, at 108, 119. But when the government shifted its focus from anticommunism to civil rights, poverty, and the war in Vietnam, the tables turned: Catholic activists became the FBI’s new surveillance targets. *Ibid.* Dorothy Day—a leader of the Catholic Worker movement who has been proposed for

sainthood in the Church—was placed on a “list of potential subversives to be interned in case of war.” *Ibid.*

The government historically targeted Jews as well. Even as the government recruited Jewish leaders’ support in framing the United States as a Judeo-Christian nation, the FBI pursued countless Jews and Jewish organizations for supposedly colluding with communists. See Sarah Imhoff, *Hoover’s Judeo-Christians*, in *The FBI and Religion*, *supra*, at 121, 121–33.

B. As modern technology enables even greater intrusion, the government continues to single out religious communities for surveillance.

The string of historical examples recounted above is enough to raise grave concerns over the First Circuit’s ruling here. But unfortunately, these kinds of government tactics of targeting religious minorities for surveillance are not a thing of the past. They continue apace today.

In recent times, government surveillance has been particularly acute and widespread against Muslims. The NYPD, for example, monitored Muslims from 2001 to 2014 through its Muslim Surveillance and Mapping Program. *Factsheet: The NYPD Muslim Surveillance and Mapping Program*, Bridge, a Georgetown University Initiative (May 11, 2020), <https://perma.cc/X7RG-LP3L>. Among other things, the program targeted mosques, which the NYPD labeled “hot spots.” *Ibid.* In the New York City area alone, the NYPD infiltrated at least 250 mosques. *Ibid.* The NYPD’s targeted surveillance of Muslims even crossed into New Jersey, where NYPD operatives surveilled at

least 20 mosques, as well as numerous restaurants, shops, schools, and Muslim student groups. *Ibid.*

These investigative choices have all too often been misinformed by stereotypes about Muslims. As late as 2012, FBI training materials characterized the Prophet Muhammad as a “cult leader” and taught trainees that the more devout a Muslim, the more prone he is to violence. Erica Goode, *F.B.I. Chided for Training That Was Critical of Islam*, N.Y. Times (Sept. 16, 2011), <https://nyti.ms/3UCwU98>.

The NYPD’s efforts also included hiring “crawlers”—informants who infiltrated mosques, took notes on statements by imams and congregants, and passed along lists of attendees to the police. The Muslim American Civil Liberties Coalition et al., *Mapping Muslims: NYPD Spying and its Impact on American Muslims*, CLEAR Project, CUNY School of Law, 11, <https://perma.cc/XG7U-YHEU> (last visited Dec. 20, 2022). A Muslim Sunday School teacher and an imam noticed the continuous presence of undercover police cars outside their mosques and religious spaces. *Id.* at 12.

Similarly, in a case that recently reached this Court, the FBI sent a paid informant into California Muslim communities to pose as a convert to Islam and “gather information on Muslims in an indiscriminate manner.” See *FBI v. Fazaga*, 142 S. Ct. 1051, 1058 (2022) (quoting complaint). And that he did. The informant gathered hundreds of phone numbers, thousands of email addresses, and hundreds of hours of video and audio recording of public and private conversations in mosques and homes. *Ibid.* (citing informant’s declaration). All this while the FBI held out to the public that it had no “surveillance program to

monitor the constitutionally protected activities of houses of worship” or to “target or monitor legal activity of Muslim groups anywhere in the nation.” Michael Barkun, *The FBI and American Muslims After September 11*, in *The FBI and Religion* 244, 249.

Some tactics haven’t changed: Like the FBI’s monitoring of Mennonite college students, the NYPD also surveilled college-age Muslim students who organized to speak out against government overreach. See *Mapping Muslims, supra*, at 40. The NYPD identified dozens of Muslim student associations at colleges, labeling seven of the groups as “MSAs of concern.” Bridge, *supra*. Unsurprisingly, many students chose not to associate with the groups. *Mapping Muslims, supra*, at 31. The NYPD’s Intelligence Division even sent undercover operatives into some Muslim student groups, going so far as to dispatch one to join a student white-water rafting trip to report back on their behaviors and how often they prayed. *Id.* at 40.

By August 2011, reports revealed that the NYPD had been spying on mosques as well as Muslim businesses, and community organizations for years, undermining claims that officers were only following leads for national security threats and terrorism. See Adam Goldman & Matt Apuzzo, *Inside the Spy Unit that NYPD Says Doesn’t Exist*, NBC New York, Associated Press (Aug. 31, 2011), <https://perma.cc/KJM3-9XYP>.

While Muslims are often targets, they are not alone. DHS recently targeted Reverend Kaji Doussa for her religious work at the southern border ministering to migrants. *Christian Pastor Targeted by DHS for Ministering to Migrants Sues to End Illegal Government Surveillance*, Protect Democracy (July 8, 2019), <https://perma.cc/KNL5-GTFW>. Leaked agency

documents show DHS placed Reverend Dousa on a secret watchlist and subjected her to surveillance. *Ibid.*; Mari Payton et al., *Documents Reveal Border Agents Targeted U.S. Pastor Over Caravan Marriage Ceremonies*, NBC San Diego (Jan. 7, 2020), <https://perma.cc/4FGZ-WXGF>. In New York, ICE officials monitored Reverend Dousa’s rallies and prayer vigils, leading some vulnerable migrants not to attend her church services. Compl. at 3–4, *Dousa v. Dep’t of Homeland Sec.*, No. 19CV1255-LAB(KSC), 2019 WL 2994633 (S.D. Cal. Feb. 8, 2019).

In another case, Miami police officials used tactics like those used against Ms. Moore here—“a nearby video camera that surveilled only the Property, not the street or surrounding neighborhood”—to target an Orthodox Jewish congregation for holding daily prayer services on its private property. See *Congregation 3401 Prairie Bais Yeshaya D’Kerestir, Inc. v. City of Miami*, No. 22-21213-CIV-ALTONAGA/Torres, 2022 U.S. Dist. LEXIS 184119, at *5 (S.D. Fla. Oct. 7, 2022) (citing complaint). On top of the constant camera surveillance, officials visited daily and conducted warrantless searches intending to find a violation to shut down the prayer services. *Id.* at *4–5 (citing complaint).

The Third Circuit, in a case challenging the NYPD’s anti-Muslim surveillance program, summed up the point well: “We have been down similar roads before. Jewish–Americans during the Red Scare, African–Americans during the Civil Rights Movement, and Japanese–Americans during World War II are examples that readily spring to mind. We are left to wonder why we cannot see with foresight what we see so clearly with hindsight—that ‘[l]oyalty is a matter of

the heart and mind[,] not race, creed, or color.” *Has-san v. City of New York*, 804 F.3d 277, 309 (3d Cir. 2015), as amended (Feb. 2, 2016) (quoting *Ex parte Mitsuye Endo*, 323 U.S. 283, 302 (1944)).

Ultimately, no religion is safe from surveillance. As Mayor Michael Bloomberg admitted when defending the NYPD’s Muslim Surveillance program: “[I]f they’d been another religion, we would’ve done the same thing.” Yasmeen Alamiri, *Watch: “Of Course We Were Supposed to Do That,” Bloomberg Says of Surveillance of American Muslim Community Post 9/11*, PBS News Hour (Feb. 27, 2020), <https://perma.cc/9XRH-U9FK>. Clarifying the Fourth Amendment’s protections here is thus vital to people of all faiths.

II. The decision below threatens the liberty and privacy of religious individuals.

The First Circuit’s ruling joins a troubling set of circuit precedents that greenlight long-term warrantless surveillance of homes, which implicates the government’s use of this “conventional surveillance tool” wherever it is used. See *Moore-Bush*, 36 F.4th at 363 (Lynch, J., concurring). If the Fourth Amendment doesn’t require a warrant for prolonged, around-the-clock street surveillance of homes, which are at the “very core” of the Fourth Amendment’s protection, *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)), it places forever beyond scrutiny equally invasive surveillance of houses of worship. For religious communities, the First Circuit’s decision raises a host of concerns.

First, by sanctioning the prolonged surveillance of homes—and, by extension, houses of worship—the

decision below would allow the government to identify and track nearly every aspect of a person's life "from the mundane to the intimate." *Riley v. California*, 573 U.S. 373, 395 (2014). Such a comprehensive record of a person's comings and goings would disclose "a wealth of detail," allowing the government "to ascertain, more or less at will," a person's "religious beliefs" and "associations." *United States v. Jones*, 565 U.S. 400, 415–16 (2012) (Sotomayor, J., concurring); see also *People v. Weaver*, 909 N.E.2d 1195, 1199 (N.Y. 2009) (highlighting how GPS surveillance would disclose "indisputably private" trips, like going to "the mosque, synagogue or church").

Second, the First Circuit's holding would allow the government to engage in religious profiling, targeting religious minorities for investigative scrutiny without any basis to suspect criminal wrongdoing—much as the NYPD and the FBI did in 9/11's aftermath. Though the First Amendment might offer protection if the faith group has the financial resources and political capital to bring a lawsuit, minority faiths depend first and foremost on the Fourth Amendment to require the government to get a warrant supported by a showing of probable cause. By allowing the government to monitor the entrances of homes and places of worship without a warrant, the decision would give the government an easy means to watch religious individuals and ascertain their religious associations.

Third, if law enforcement were allowed to surveil homes and houses of worship around the clock, many believers would be discouraged from practicing their faith. In the wake of post-9/11 surveillance, for example, some Muslims avoided "look[ing] Muslim in public due to fear of unwarranted attention." Saher Khan &

Vignesh Ramachandran, *Post-9/11 Surveillance Has Left a Generation of Muslim Americans in a Shadow of Distrust and Fear*, PBS News Hour (Sept. 16, 2021), <https://perma.cc/4G6X-NW7F>. And as a result of the investigation at issue in *Fazaga*, Muslims became suspicious of each other, so much so that they avoided talking to new converts. *471: The Convert (2012)*, This American Life, <https://perma.cc/AM9S-LXB9> (last visited Dec. 20, 2022).

Ultimately, what is most concerning for religious minorities is how the ruling below would give the government license to target disfavored religious groups for prolonged and intrusive surveillance without having to justify its decision before a neutral magistrate. If that ruling is allowed to stand, history will only continue to repeat itself.

CONCLUSION

The Fourth Amendment provides crucial guarantees of freedom for religious groups. The First Circuit's decision narrowing those protections thus concerns religious minorities who have been historically the illegitimate target of state surveillance and harassment. The Court should grant the petition and reverse the decision below.

Respectfully submitted,

JOSHUA C. MCDANIEL

Counsel of Record

KELSEY M. FLORES

MATTHEW E. MYATT

PARKER W. KNIGHT III

HARVARD LAW SCHOOL

RELIGIOUS FREEDOM CLINIC

6 Everett St., Suite 5110

Cambridge, MA 02138

(617) 496-4383

jmcdaniel@law.harvard.edu

Counsel for Amicus Curiae

DECEMBER 20, 2022