**STATE OF NORTH CAROLINA**
**COUNTY OF DURHAM**
**IN THE GENERAL COURT OF JUSTICE**
**DISTRICT COURT DIVISION**
**25 CV 012521-310**

**DURHAM COUNTY,**
**EX REL MAGGIE CLAPP**

**Petitioner,**

**v.**

**AMANDA SHENELLE WALLACE,**

**Respondent.**

**BRIEF OF AMICUS CURIAE ACLU OF NORTH CAROLINA LEGAL FOUNDATION IN SUPPORT OF RESPONDENT**

## INTRODUCTION

This case raises a critical question: Consistent with the First Amendment, can public officials use a state statute to insulate a public official from criticism that may be caustic or even deeply offensive? This issue transcends the current dispute between Maggie Clapp and Amanda Wallace. The Court's order silencing Ms. Wallace, if left unmodified, has broader ramifications for speech in our community, and has significant potential to chill and punish the protected speech of other citizens who vociferously criticize their government.

"One of the prerogatives of American citizenship is the right to criticize public men and measures." *Hustler Mag. v. Falwell*, 485 U.S. 46, 51 (1988). That includes "vehement, caustic, and sometimes unpleasantly sharp attacks



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on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). "There is no question that speech critical of the exercise of the State's power lies at the very center of the First Amendment." *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034–35 (1991). The First Amendment provides ironclad protection to this speech because "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964).

The statute used by Durham County to silence Ms. Wallace, the Workplace Violence Protection Act (WVPA), N.C.G.S. § 95-260 *et seq.*, was intended to expand protections for victims of domestic violence.[1] The law permits a court to enter a no-contact order against a person who engages in certain harassing conduct against an individual at the individual's workplace. In an ordinary case, application of the WVPA poses minimal First Amendment concerns. But when considering an application for a no-contact order under the WVPA by a government official, the Court must take special care to ensure that the First Amendment rights to express political views, to peacefully protest, and to

[1] *See, e.g.*, Angela Heywood Bible, *Severe abuse, light penalty*, RALEIGH NEWS & OBSERVER (May 20, 2003) (describing the bill as one that would "allow[ ] an employer to seek a restraining order on behalf of employees who are domestic violence victims and to prevent their abusers from contacting or visiting the workplace"); Dorothy Y. Lewis, *Programs aid victims of violence*, ROCKY MOUNTAIN TELEGRAM, at 2 (Oct. 16, 2004) (describing the function of the newly enacted WVPA as allowing "[e]mployers . . . to get workplace violence prevention orders for their employees who have suffered from abuse or are in danger of being a victim of domestic violence.").

petition government officials for redress of grievances are protected. The Court can protect First Amendment rights while also addressing legitimate safety concerns of government officials. It should grant Ms. Wallace's Rule 60(b) motion and amend its December 5, 2025 no-contact order to distinguish harassing conduct from protected speech, narrowly tailoring any imposed restrictions, and identifying prohibited conduct with specificity.

## ARGUMENT

### I. The First Amendment limits how the WVPA can be applied to speech about public officials.

The WVPA was enacted in 2004 in response to high rates of domestic violence in the state and public criticism of existing protections for victims.[2] The statute was not intended to curb protests by those critical of the government, and although it allows restrictions on speech in some circumstances, such restrictions must be consistent with the First Amendment.

#### A. Statutes that restrict speech must be narrowly construed.

When applying statutes that allow for restrictions on speech, courts must allow breathing room for First Amendment rights. And courts must be especially cautious when applying speech-restrictive statutes to speech about

[2] *See* Lewis, *supra* note 1.

public officials and issues of public concern.

Even threatening language is protected to some extent by the First Amendment. Only "true threats" are unprotected, and state laws punishing threats of violence can only be constitutionally applied to a defendant where the state can show that he consciously disregarded a substantial risk that the communication would be understood as threatening violence. *Counterman v. Colorado*, 600 U.S. 66, 69, 72–73 (2023).

Speech on public issues and public officials receives even greater protection. Given its special status under the First Amendment, courts must leave breathing room for provocative and hyperbolic speech about and directed towards public officials. In *New York Times v. Sullivan*, the Supreme Court concluded that the First Amendment's special solicitude for criticism of public officials limited a state's power to award damages for defamation in cases brought by public officials against critics of their official conduct. 376 U.S. at 283. Although defamation, like a true threat, is unprotected by the First Amendment, punishment of defamation is constitutionally limited to ensure that speech about public officials is not chilled. *See id.* at 271–72 ("[E]rroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they need to survive.").

The Supreme Court has similarly held that speakers cannot be held liable for intentional infliction of emotional distress for speech on matters of public concern. *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (reversing jury verdict against group that picketed fallen soldier's funerals to convey their belief that God punishes the country's sins by killing American soldiers, including with signs carrying messages such as "Thank God for IEDs," "Thank God for Dead Soldiers," "Pope in Hell," "Priests Rape Boys," "You're Going to Hell," and "God Hates You.") These limitations on the ability of states to restrict speech are applied even to statutes that punish speech after the fact, with the full protection of a jury trial. Statutes like the WVPA that allow restrictions on a person's future speech are subject to even greater scrutiny. *See New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam).

The same principles must be applied to the WVPA. When assessing a government official's application for a no-contact order, the Court must delineate harassing conduct from protected speech, narrowly tailor any restrictions to allow breathing room for First Amendment activity, and clearly define its prohibitions.

B. Protected political speech cannot serve as a basis for a no-contact order under the WVPA.

First, before entering a no-contact order regarding a public official, a court must review the record to distinguish proscribable conduct from protected speech and enter an order only if the former is present.

"There is no categorical 'harassment exception' to the First Amendment's free speech clause." *Saxe v. State College Area School Dist.*, 240 F.3d 200 (3d Cir. 2001) (Alito, J.). Instead, some subset of "harassing" speech may be proscribed because it falls into one of the "historical and traditional categories" of speech that lie beyond the protection of the First Amendment. *United States v. Stevens*, 559 U.S. 460, 468 (2010) (listing obscenity, defamation, fraud, incitement, and speech integral to criminal conduct as historically unprotected "categories" of speech).

In addition to the categories listed by *Stevens*, "true threats," "fighting words," child pornography, and speech that could threaten national security in times of war have been historically recognized as unprotected by the First Amendment. *United States v. Alvarez*, 567 U.S. 709, 717 (2012) (plurality opinion) (citing *Watts v. United States*, 394 U.S. 705 (1969) (true threats); *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (fighting words); *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931) (national security)). But each of those categories is

narrowly defined, and none of them apply to the speech at issue in this case. "New categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 791 (2011). Accordingly, laws restricting "harassment" must be narrowly construed to apply only to non-speech conduct and to unprotected speech.[3] *See, e.g.*, *United States v. Yung*, 37 F.4th 70, 78 (3d Cir. 2022) (explaining that a harassment statute cannot be construed to cover speech such as "[f]illing a city councilman's voicemail box with complaints about his vote on a controversial municipal ordinance"); *see also* Eugene Volokh, *Overbroad Injunctions Against Speech*, 45 HARV. J. LAW & PUB. POL'Y 147, 189–196 (2022).

The task of sorting protected speech from unprotected speech and conduct must be performed "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," even when it includes "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

[3] When the North Carolina Court of Appeals reviewed a previous no-contact order entered against Ms. Wallace, it was unable to review whether the facts alleged in the petition supported issuance of the order because the trial court failed to make specific findings of fact. *Durham Cnty. Dep't of Soc. Servs. v. Wallace*, 295 N.C.App. 440, 449 (2024). Accordingly, it has not yet had occasion to interpret the term "harassment" in the statute. But the North Carolina Supreme Court has been careful to distinguish protected from unprotected speech in a case concerning a similar statute. *See State v. Bishop*, 368 N.C. 869, 872 (2016) (reversing conviction under cyberbullying statute that prohibited making internet posts "[w]ith the intent to intimidate or torment a minor").

*Sullivan*, 376 U.S. at 270. Under the First Amendment, speakers may use "exaggeration" and even "vilification" of public officials and public figures because the "people of this nation have ordained in the light of history" that "these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." *Cantwell v. Connecticut*, 376 U.S. 296, 310 (1940). "The First Amendment's protection of the right to criticize public officials safeguards our democracy" by keeping public officials accountable to the people whom they serve. *State v. Taylor*, 379 N.C. 589, 606 (2021). In our constitutional system, public officials are expected to be people "of fortitude, able to thrive in a hardy climate." *Sullivan*, 376 U.S. at 273. Even ordinary citizens must "tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment." *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 774 (1994).[4] *See also* Aaron H. Caplan, *Free Speech and Civil Harassment Orders*, 64 HASTINGS L.J. 781, 821, 837, 849 (2013) (discussing constitutional problems with civil harassment laws).

[4] The Supreme Court has recognized the First Amendment right to publicly criticize even private individuals, even when that criticism attempted to create social ostracism to pressure those individuals to behave differently. *See, e.g.*, *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 417 (1971) (striking down an injunction prohibiting activists from distributing leaflets criticizing a real estate agent's behavior near his home and inviting readers to call him at his home); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (permitting activists to publicize the names of private individuals who were not complying with boycott of white-owned stores).

C. Speech restrictions in a no-contact order must burden no more speech than necessary.

If a court determines that the respondent's conduct has exceeded the bounds of protected speech and warrants a no-contact order under the WVPA, the court must ensure that any restrictions it imposes are appropriately tailored and allow breathing room for the respondent to exercise her First Amendment rights.

Injunctions that restrict future speech, such as no-contact orders, require even "more stringent application of First Amendment principles" than generally applicable statutes burdening speech because they inherently carry "greater risks of censorship and discriminatory application than do general ordinances." *Madsen*, 512 U.S. at 764. Unlike content-neutral statutes, injunctions restricting speech must burden "no more speech than necessary to serve a significant government interest." *Id.* at 765. And for the restriction to be valid, the government must first demonstrate that alternative measures burdening less speech "would fail to achieve the government's interests." *McCullen v. Coakley*, 573 U.S. 464, 495 (2014) (invalidating statutory 35-foot buffer zones around entrances to abortion clinics, enacted in response to harassment of clinic patients, because they compromised the ability of abortion opponents to engage in their preferred form of speech).

Finally, any no-contact order must clearly define its restrictions so as to avoid chilling protected activity.

## II. The Court's no-contact order against Amanda Wallace violates the First Amendment.

The no-contact order entered against Ms. Wallace suffers from multiple constitutional infirmities. First, it casts protected political speech as harassment. Second, it impermissibly burdens more speech than necessary to serve the asserted significant government interest. Finally, the order does not clearly define its restrictions on Ms. Wallace's freedom of movement, chilling her from engaging in protected activity.

### A. The order casts protected political speech as harassment.

The Court states that Ms. Wallace has made "defamatory and harassing statements, such as, but not limited to: 'Maggie Clapp, Kidnapper,' 'Maggie Clapp commits Genocide,' 'Go Back to Florida, Maggie Clapp the Kidnapper.'" Order at 2. But these statements, harsh as they are, are protected political speech—not proscribable defamation or harassment. The statements cited by the Court aren't evidence of "unlawful conduct" warranting a no-contact order, nor can they be prohibited by any no-contact order that is entered.

Defamation requires proof that a person caused injury to the plaintiff by intentionally or recklessly making false statements of fact—not opinion—of or

concerning the plaintiff, which were published to a third person. *Desmond v. News & Observer Publ'g Co.*, 241 N.C.App. 10, 16 (2015). The publication requirement means that any statements Ms. Wallace made to Ms. Clapp alone, such as those made in an email only to her or in a one-on-one interaction, cannot be defamatory and cannot be properly constrained by a protective order. To the extent that Ms. Wallace's statements are public or made to third parties, such comments are protected rhetorical hyperbole, not defamation. *See Greenbelt Coop. Publ'g Ass'n v. Bresler*, 398 U.S. 6, 14 (1970) (rejecting the theory that the use of the word "blackmail" to describe a developer's negotiating position was defamatory, reasoning that "even the most careless reader must have perceived that the word was no more than rhetorical hyperbole" and not an actual accusation of a crime); *Hustler Mag.*, 485 U.S. at 50 (rejecting liability for ad parody that could not "reasonably [be] interpreted as stating actual facts" about an individual); *CACI Premier Tech. v. Rhodes*, 536 F.3d 280, 301–02 (4th Cir. 2008) (radio hosts' insistence on referring to military contractors as "hired killers" was permissible rhetorical hyperbole).

"In determining whether a statement can be reasonably interpreted as stating actual facts about an individual, courts look to the circumstances in which the statement is made. Specifically, [courts] consider whether the language is loose, figurative, or hyperbolic language, as well as the general tenor" of the speech. *Desmond*, 241 N.C.App. at 17. "[I]f it is plain that the speaker is

expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222 (7th Cir. 1993) (Posner, J.). So too here. Ms. Wallace's use of the words genocide and kidnapping clearly express her subjective opinion of DSS's activities.

The Fourth Circuit's decision in *CACI* is on point. 536 F.3d 280. CACI, a defense contractor that interrogated detainees for the U.S. military at Abu Ghraib, sued a talk radio host who harshly criticized it for treatment of detainees at the prison. *Id.* at 283–84, 288–92. The host corrected a guest who referred CACI as "contractors," saying, "don't call them contractors, call them what they are, they're hired killers." *Id.* at 301. Elsewhere, she characterized the situation with U.S. defense contractors in Iraq as "[m]ercenaries all over the country, killing people." *Id.* And she referred to CACI and three other defense contractors by name, saying they "really didn't even exist until this was started. And then they got this idea, hey let's get a Department of Defense contract and we'll send killers over there." *Id.* at 300. The court concluded that none of these statements could support a claim for defamation because they were "permissible hyperbolic characterization[s]" and "quintessential examples of non-actionable rhetorical hyperbole." *Id.* at 301–02.

Like the radio host's reference to CACI as "hired killers," Ms. Wallace's use of the terms "kidnapping" and "genocide" are rhetorical hyperbole. They

express her moral condemnation of Ms. Clapp's leadership of an agency that removes Black children from their families, not accusations that Ms. Clapp has committed a felony.

Ms. Wallace's words have colloquial and rhetorical meanings outside of their formal legal definitions,[5] and their meaning as applied to DSS' activities can be actively debated among those concerned about government intervention in families, especially where such intervention disproportionately affects Black families.[6] In recent years, members of the public have vastly divergent views on what constitutes "genocide." In contesting how the United States should act in relation to Israel and Palestine, participants in both sides of the debate have accused the other side of being supportive of or complicit in genocide. And in recent months, members of the public have regularly used the term "kidnap" to describe actions of federal immigration officers apprehending people suspected of being present in the country without legal status—even though the federal government insists their actions were lawful. The choice of these words,

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[5] *See Kidnap*, DICTIONARY.COM, https://www.dictionary.com/browse/kidnap (last visited March 13, 2026) ("[T]o seize and detain or carry away by unlawful force or fraud and often with a demand for ransom); *see also* Ex. 5 to Rule 60(b) Mot., AM Tr. at 1:53:20–1:54:51 ("AM Tr.") (testimony by Professor Sarah Katz describing the UN's definition of "genocide," which includes "forcibly transferring the children of" one racial group to another) (citing Convention on the Prevention and Punishment of the Crime of Genocide, Jan. 12, 1951).

[6] *See* Sara DePasquale, *The Child Welfare System and Race*, ON THE CIVIL SIDE: A UNC SCHOOL OF GOVERNMENT BLOG (June 15, 2020), https://civil.sog.unc.edu/the-child-welfare-system-and-race/.

both commonly used in political rhetoric, and the context of protest makes clear that Ms. Wallace's use of these terms are not statements of actual fact.

The Court's findings of fact also describe an email from Ms. Wallace that stated, "Dear Maggie Clapp, You continue to direct your designees to tear families a part and then keep them a part for years! You should be ashamed of yourself! Release ALL THE CHILDREN you are holding hostage! QUIT YOUR JOB!!!" The inclusion of this email in the Court's findings of fact suggests that the Court considers this email to be unprotected speech. But this is speech to a public official, criticizing their official conduct in emphatic language, and imploring the official to change course. Speech of this kind "lies at the very center of the First Amendment." *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034–35 (1991). Ms. Wallace's direct appeals to Ms. Clapp are protected by two separate clauses of the First Amendment: the right to freedom of speech and the right to petition the government for redress of grievances.

Casting Ms. Wallace's use of the terms "kidnapping" and "genocide" and her email to Ms. Clapp as proscribable harassment violates her First Amendment rights and sets a dangerous precedent, under which public officials can obtain restrictions on citizen's future speech based on the citizen's heated criticism of their official conduct. Out of fear that the wrong choice of words could result in their being barred from contacting their public officials or moving freely about their city, citizens would curtail the exercise of their First

Amendment rights to speak, to protest, and to petition government officials. Such a regime is incompatible with our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," even when it includes "vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Sullivan*, 376 U.S. at 270.

B. The order burdens more speech than necessary to serve any significant government interest.

The order also violates *Madsen*'s requirement that an injunction restricting future speech burden no more speech than necessary to serve the government's specific interests. It does so in two ways: first, by imposing vague and overbroad restrictions on the content of Ms. Wallace's speech, and second, by imposing a total prohibition on telephone calls that is unjustified by the record.

1. The order imposes vague and overbroad restrictions.

The order states that Ms. Wallace may not use "abusive, threatening, and harassing language" in emails to Ms. Clapp. Order at 6. It also states that Ms. Wallace "shall not abuse or injure, Durham County, Durham County property, or Maggie Clapp at any location she is engaged in the business of Durham County DSS, at her residence, or the surrounding areas of said locations." *Id.* The written order does not define "abusive, threatening, and harassing language" or "abuse or injure." However, at the hearing, the Court stated that Ms. Wallace cannot use the words "kidnap" or "genocide" directed toward Ms.

Clapp. Ex. 6 to Rule 60(b) Mot., PM Tr. at 1:21:36 ("PM Tr."). Elsewhere, the Court said that "the language does not need to be threatening, harassing, 'you're a kidnapper, you have genocide, go back to Florida,' that type of stuff." *Id.* at 1:17:19. And after stating that Ms. Wallace could go to board meetings and speak during public comment, the Court said: "But when you allege that someone is a kidnapper, that is accusing someone of a crime. I think that language needs to be toned down. Kidnapping is a felony. I think that language needs to be toned down." *Id.* at 1:16:18.

The extent of the Court's restraint on Ms. Wallace's speech is unclear for two reasons. First, the Court did not specify whether the terms and phrases identified by the Court at the hearing are the totality of what is prohibited by "abusive, threatening, or harassing language," or if the prohibition extends to more content. Second, it is not clear from these comments if the restriction on the use of the language identified by the court applies to email only, or if those limitations are also part of the Court's order that Ms. Wallace not "abuse or injure, Durham County, Durham County property, or Maggie Clapp at any Durham County property, at any location she is engaged in the business of Durham County DSS, at her residence, or the surrounding areas." Order at 6. These open questions chill Ms. Wallace's speech because she is left guessing about what she can and where she can say it. And regardless of the answer to

either question, these content-based restrictions on Ms. Wallace's speech prohibit protected political speech.

Ms. Wallace's choice of language for her advocacy is constitutionally protected criticism of a public official, not defamation.[7] Accordingly, these content-based restrictions on Ms. Wallace's speech are incompatible with the First Amendment.

2. The order infringes Ms. Wallace's right to petition by imposing a total prohibition on telephone calls that is unjustified by the record.

The order also prohibits Ms. Wallace from contacting Ms. Clapp by telephone. But the order makes no factual findings that Ms. Wallace has ever used telephone calls to harass or intimidate Ms. Clapp in any manner. Neither Ms. Clapp's affidavit nor any testimony at the hearing mentions any instance of Ms. Wallace using telephone calls to harass or intimidate Ms. Clapp. Absent any factual findings or evidence to support it, then, the order's total prohibition on Ms. Wallace contacting Ms. Clapp by phone impermissibly burdens "more speech than necessary to serve a significant government interest." *Madsen*,

[7] The attorney for Durham County argued that these terms were not "merely hyperbole" but were "inciteful." PM Tr. at 47:11. Similarly, when asked to describe what it was that these statements made her afraid of, Ms. Clapp stated that it made her afraid "of where that will lead" because "if people really believe that to be true . . . people can act on that." AM Tr. at 43:56. But Ms. Wallace's rhetoric does not rise to the level of constitutionally proscribable incitement. There are no facts in the record that could support the conclusion that her statements were intended to and likely to incite "imminent lawless action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

512 U.S. at 765.

If the Court were to find that a restriction on telephone calls was necessary to prevent harassment through disruptive call frequency, the restriction must burden no more speech than necessary. For example, a more tailored order might limit the frequency or timing of the calls.

C. The restrictions on Ms. Wallace's freedom of movement are unconstitutionally vague.

Finally, the order imposes unclear restrictions on Ms. Wallace's access to the streets and sidewalks around Ms. Clapp's apartment building. This lack of clarity makes it impossible for Ms. Wallace to know how to comply with the Court's order in the public spaces near Ms. Clapp's apartment and has already chilled Ms. Wallace's exercise of her First Amendment rights.

As the Court noted in its findings of fact, Ms. Clapp's apartment complex is adjacent to Durham Central Park, which is "regularly the location of protests in Durham." Order at 3. However, Ms. Clapp's individual apartment does not face or border the park. *Id.* The Court's written order prohibits Ms. Wallace from going to "the sidewalks or streets adjacent to" Ms. Clapp's apartment complex (but allows her to go to the Durham Food Hall). *Id.* at 6. When Ms. Wallace's attorneys asked for clarification on this restriction at the hearing, the Court stated that Ms. Wallace could go to Central Park, that she could "go down Foster Street," and that she could protest on the sidewalk "across the

street," but says that she can't go down the "sidewalks right about the apartments where she lives." PM Tr. at 1:19:49, 1:22:22–1:23:51.

This order's vagueness violates Ms. Wallace's due process rights. A court order violates due process where it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *Hill v. Colorado*, 530 U.S. 703, 732 (2002). Here, Ms. Wallace has been unable to determine if the Court's order prohibits her from walking, driving, or parking on West Corporation Street, Rigsbee Avenue, and/or Foster Street, and if so, for how many blocks those restrictions extend. She also fears that—even if the Court intended to allow her to walk down Foster Street to access Durham Central Park, for example—because the Court's discussion of these streets and the park do not appear in the written order, she could be arrested for violating the order if she entered Durham Central Park and would not be able to show the order to prove that she is allowed to be there.

This lack of clarity has also chilled and limited Ms. Wallace's exercise of First Amendment rights in traditional public fora—public streets and a public park. Because of her uncertainty about where she can be in the Central Park area, Ms. Wallace has been unable to attend several recent protests against the killings of citizens by federal immigration officers that she otherwise would have attended and fears that she will not be able to hold an annual vigil for

children taken from their families that she has organized in the park each year. *See* Ex. 7 to Rule 60(b) Mot.

The vague and overbroad restrictions imposed on Ms. Wallace's speech and movement violate due process and impermissibly restrict her exercise of First Amendment rights. The Court should modify its order so that any restrictions on Ms. Wallace's movement or location apply to private property only and do not restrict her ability to participate in First Amendment-protected activities in public spaces.

## CONCLUSION

The Court's Order of December 5, 2025 violates Ms. Wallace's constitutional rights. The Court should grant Ms. Wallace's Rule 60(b) motion and amend the no-contact order as follows: First, the Court should remove references to the language of "genocide" and "kidnapping" from its findings of fact, as well as the email to Ms. Clapp. The Court should then re-evaluate whether the remaining findings of fact support its conclusion that Ms. Clapp has suffered unlawful conduct committed by Ms. Wallace within the meaning of the WVPA. If the Court determines that they do support that conclusion and a no-contact order is warranted, the Court should amend its restrictions to either remove the restriction on telephone calls to Ms. Clapp and her department or, at a minimum, narrow the restriction to limit only the frequency or timing of

calls. Finally, the Court should clarify its restrictions on Ms. Wallace's freedom of movement.

Respectfully submitted this 16th day of March, 2026.

**ACLU OF NORTH CAROLINA LEGAL FOUNDATION**

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by email on the following counsel for the parties:

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This the 16th day of March, 2026.

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