COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, CO 80203 Arising from: District Court, Jefferson County, Colorado The Honorable Chantel E. Contiguglia Case No. 2024CV30008 **Defendant-Appellant:** KIRSTEN WEST, in her official capacity as the Records Manager of the Police Department, for the CITY OF LAKEWOOD, COLORADO v. **Plaintiff-Appellee:** ION MEDIA NETWORKS, INC. d/b/a Scripps News	⮝COURT USE ONLY⮝ Case Number: 2024CA1416
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ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Colorado Appellate Rules (C.A.R.) 28 and 32. Specifically, the undersigned certifies that:

The brief complies with C.A.R 28(g) and contains 9,456 words, which is not more than the 9,500 word limit.

The brief complies with C.A.R. 28(a)–(b).

For each issue on appeal, I state whether I agree with the Appellant's statement concerning which Standard of Review should be used to review that issue. I also state whether I believe the issue has been preserved for appeal. If I disagree with the proposed Standard of Review or whether the issue was preserved, I explain why.

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/s/Rachael Johnson

Rachael Johnson #43597

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ISSUES ON APPEAL

1. Whether the District Court properly construed the Enhance Law Enforcement Integrity Act when it concluded, after reviewing the body worn camera footage at issue, that the City of Lakewood must provide a copy of that footage to the Plaintiff with Ms. Martinez's head blurred to protect the privacy interests that were expressly recognized by that court.

STATEMENT OF THE CASE

This case concerns Ion Media Networks, Inc.'s ("Ion Media's") reporter Lori Jane Gliha's request pursuant to the Enhance Law Enforcement Integrity Act, § 24-31-902(2), C.R.S. (or "the Act"), for access to the March 27, 2024 body worn camera ("BWC") footage of the fatal encounter between three uniformed officers of the Lakewood Police Department ("the City" or "Lakewood Police") and Mariana Martinez ("Ms. Martinez").[1] On May 24, 2024, the District Court for Jefferson

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[1] C.A.R. 32(f)(2) applies only in "criminal cases and cases brought under Title 19," so it is not applicable here. Furthermore, Ms. Martinez's full name was publicly disclosed by the District Attorney for the First Judicial District, *see* CF, pp. 28–33; Letter from Alexis King, Dist. Att'y, 1st Jud. Dist., to Philip Smith, Police Chief, Lakewood Police Dep't (Sept. 4, 2023), https://firstda.co/wp-content/uploads/2023/09/CIRT-03-27-2023-Decision-Letter-PDF.pdf, and the County Coroner, and has been included in numerous news reports. *See, e.g.*, Rogelio Mares, *17-year-old's killing by police raises questions for councilor*, KDVR (Aug. 18, 2023), https://kdvr.com/news/local/17-year-olds-killing-by-police-raises-questions-for-councilor/; Jeffrey A. Roberts, *Judge: Lakewood police must disclose blurred body-cam footage of officers shooting and killing 17-year-old*, Colo.

County ordered Defendant-Appellant Kirsten West, in her official capacity as the Records Manager of the Police Department for the City of Lakewood (the "City"), to provide a blurred version of the BWC footage to Plaintiff-Appellee Ion Media. CF, pp. 141–70. Rather than comply with that order, the City instead filed a Motion for Post-Trial Relief Pursuant to C.R.C.P. 59 with the District Court. CF, pp. 96–109. In a written order, the District Court denied the City's motion, finding once again that § 24-31-902(2), C.R.S. mandated disclosure. CF, pp. 122–27. The City appealed, obtained a stay of the District Court's order, and has yet to produce the BWC footage. As discussed herein, the District Court reached the correct result, and its ruling should be affirmed.

Factual Background

On March 27, 2023, three uniformed Lakewood Police officers pursued a suspect in response to a report of armed robbery. During the ensuing confrontation, all three officers discharged their service firearms, each of them firing about ten times and fatally wounding Ms. Martinez. CF, pp. 2, 23. At the time, all three

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Freedom of Info. Coal. (May 24, 2024), https://coloradofoic.org/judge-lakewood-police-must-disclose-blurred-body-cam-footage-of-officers-shooting-and-killing-17-year-old/; *List of killings by law enforcement officers in the United States, March 2023*, Wikipedia, https://en.wikipedia.org/wiki/List_of_killings_by_law_enforcement_officers_in_the_United_States,_March_2023 (last updated Sept. 24, 2024).

officers were wearing body worn cameras (BWC) that recorded their pursuit, the confrontation, and their firing of weapons upon Ms. Martinez. CF, p. 2. At a press conference that same day, Lakewood Police announced that Ms. Martinez had fired her weapon at the officers. CF, pp. 21, 51. However, later in the day, Lakewood Police withdrew that statement, saying Ms. Martinez had only pointed a gun at the officers. *Id.*

The Jefferson County Coroner later determined that Ms. Martinez's cause of death was multiple gunshot wounds, and the manner of her death was homicide. CF, p. 64. The autopsy report—which included Ms. Martinez's full name and date of birth—has been released to the public under Colorado's Open Records Act. CF, p. 23.

On August 16, 2023, Ms. Martinez's family members filed a formal notice of claim pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., calling into question the Lakewood Police officers' conduct in discharging their firearms and killing their daughter. CF, p. 2. On September 4, 2023, the District Attorney for the First Judicial District transmitted to the Chief of Police and the public her final report concluding the Critical Incident Response Team investigation into the officers' conduct that caused Ms. Martinez's death. CF, pp. 28–33.

On September 26, 2023, after Ms. Martinez's family filed their notice of complaint, Ms. Gliha submitted a request to the City on behalf of Ion Media pursuant to § 24-31-902, C.R.S. for a copy of the BWC footage of the officers' confrontation with Ms. Martinez. CF, p. 34. The City denied Ion Media's request, citing both § 24-31-902, C.R.S. and § 19-1-304, C.R.S. CF, p. 35. Ms. Gliha sought an explanation for the City's denial. CF, p. 36. In response, Deputy City Attorney Patrick Freeman stated: "I have cited the specific statutes that apply to your request. I will not be providing you with my legal analysis of those statutes." *Id.* On October 25, 2023, in-house counsel for Ion Media, Sadie Craig, emailed Mr. Freeman, asking the City to reconsider its blanket denial. CF, pp. 37–38. In her letter, Ms. Craig explained that the Enhance Law Enforcement Integrity Act mandates release of BWC recordings with any privacy interests addressed through facial blurring, and further urged the City to explain the basis for concluding that none of the footage should be released. *Id.*

The same day, Deputy City Attorney Alex Dorotik informed the attorney for Ms. Martinez's family that the City had received requests for release of the BWC footage, stating "We do not intend to release. Can you please confirm that there is no change in your clients' position concerning release of the video and/or if you wish to discuss in any way?" CF, p. 24. The attorney indicated he no longer represented

the family, and that the City Attorney's Office could communicate directly with the family members. *Id.* Later that day, Mr. Freeman contacted one of Ms. Martinez's family members and stated—incorrectly—that Ms. Martinez's "privacy interests are vested with you, her family, and you can ultimately decide whether you want the video footage released to the media and made public." *Id.*

The following day, on October 26, 2023, Mr. Freeman emailed Ms. Craig and reiterated the Lakewood Police Department's position that it would not release any of the BWC recordings, because "specific statutory authority . . . necessitates the denial of [the] requests." CF, pp. 39–40. On December 12, 2023, Ion Media counsel emailed the City Attorney's Office asking that they reconsider their position and provide Ion Media with the BWC recordings or Plaintiff would be compelled to initiate legal action. CF, pp. 41–42.

Procedural Background

On January 22, 2024, Ion Media filed a Complaint for Declaratory and Injunctive Relief in the District Court seeking access to BWC footage under §§ 24-31-902 and 24-72-305, C.R.S., and petitioning the court for a show cause hearing under the Colorado Criminal Justice Records Act. CF, pp. 20–27. Ion Media filed its First Amended Complaint on February 1, 2024. CF, pp. 50–59. The City submitted its Answer to First Amended Complaint on February 21, 2024. CF, pp.

78–86. The District Court held two status conferences, one on March 15, 2024, the other on April 3, 2024. CF, pp. 88–89, 92–93. At the April 3, 2024 status conference, both parties agreed that the court needed to conduct an *in camera* review of the BWC footage to determine whether it should be released in blurred fashion or not at all. CF, p. 144. In accordance with the District Court's order, the City filed under seal the BWC footage at issue along with a surveillance video of the March 27, 2023 incident. CF, pp. 94–95.

On May 24, 2024, a show cause hearing was held before the Honorable Chantel E. Contiguglia. CF, pp. 141–70. Having reviewed the BWC footage, heard the parties' respective positions and legal arguments, and reviewed the pleadings, the District Court entered an oral order finding that § 24-31-902(2), C.R.S. mandated release of the BWC footage. CF, pp. 147–48, 168. Specifically, the court held that § 19-1-304, C.R.S. concerning juvenile delinquency records did not apply to Ion Media's request because the BWC footage at issue did not concern a juvenile delinquency action. CF, p. 148. The court held that consent of the family to release the records was "not the proper . . . end of the analysis" and that the plain language of § 24-31-902(2) mandated disclosure. CF, pp. 147–48. Having also found that there was a "substantial privacy concern" in the BWC footage, the District Court

directed the City to blur the face and head of Ms. Martinez before release, pursuant to § 24-31-902(2)(b)(II)(A), C.R.S. CF, p. 149.

Immediately after the court delivered its oral ruling, the City asked the court to find that blurring was insufficient to protect the substantial privacy interests of Ms. Martinez and also to find that the audio associated with the BWC footage must be muted. CF, pp. 150–56. The court asked the City if it had any "authority . . . that suggest[ed] or state[d] that a deceased individual has a privacy interest," and the City indicated it did not. CF, p. 156. The court expressly declined to find that blurring was insufficient. CF, p. 153. As to the audio, the court concluded that there was "no guidance" in the statute, which only requires "blurring" pertaining to "vision." CF, p. 154. The City was ordered to provide the blurred footage to Ion Media by 5:00 p.m. on June 10, 2024 (which the City asked to be extended from June 7, 2024). CF, pp. 168–69.

On June 10, 2024, the City filed a motion for post-trial relief pursuant to C.R.C.P. 59 and (after 5:00 p.m. that day) a motion asking the court to stay its prior order. CF, pp. 96–110, 111–14. The Rule 59 motion argued that the court's finding was erroneous because it did not apply the juvenile delinquency statute, § 19-1-304, C.R.S. CF, p. 102. The City argued that the court erred by failing to apply § 24-31-

902(2)(b)(II)(B), C.R.S., which it claimed required the court to "withhold video *in its entirety*." CF, p. 105 (emphasis in original).

In a written order on July 3, 2024, the District Court denied the City's motion for post-trial relief, finding that "the plain text of the [Enhance] Law Enforcement Integrity Act requires family consent only when the injury was caused by someone other than a peace officer and the video is to be released unblurred. When either the injury was caused by a peace officer or the video is blurred, family consent is not required," and that here, "disclosure is mandatory, not discretionary." CF, p. 125. The court further affirmed its determination that § 19-1-304, C.R.S. of the Children's Code did not apply to the BWC footage at issue. CF, p. 126.

The City continues to withhold the BWC footage from Plaintiff-Appellee and on August 6, 2024 filed this appeal. CF, pp. 186–97. Moreover, this Court's order staying the injunctive order below, over Plaintiff-Appellee's objection, remains in effect. On September 24, 2024, Ion Media filed a motion for expedited briefing with this Court, which was denied.

SUMMARY OF THE ARGUMENT

This case stems from a tragic event that has unfortunately been repeated across the country and throughout the state of Colorado[2]—the shooting death of a minor by peace officers. The primary impetus for the legislature's Enhance Law Enforcement Integrity Act in 2020 were the killings of George Floyd and Elijah McClain at the hands of law enforcement. The purpose of the Act was to improve integrity, transparency and accountability in policing. The Act was passed with broad bipartisan support and is unequivocal in its terms, which afford the public prompt

[2] *See, e.g.*, *CSPD releases body camera footage in officer involved shooting*, KKTV 11 News (Jan. 6, 2024), https://www.kktv.com/video/2024/01/06/cspd-releases-body-camera-footage-officer-involved-shooting/ (Colorado Springs police shooting of a 16-year-old carjacking suspect in December 2023); 9News, *Body cam: Loveland Police officers sued after arrest of teen, tasing of father*, YouTube (June 15, 2022), https://youtu.be/liUfEpyeAwE?si=Xn1RYLrJn77IOM0C&t=688 (Loveland Police arresting 14-year-old girl in June 2020); CBS Colorado, *Douglas County School District, Sheriff Face Lawsuit After 11-Year-Old With Autism Handcuffed*, YouTube (Mar. 9, 2021), https://www.youtube.com/watch?v=0aRS0jGCwVw&t=93s; *RAW: Body cam video shows officers pepper-spray teen who wouldn't 'calm down'*, 9News (Oct. 20, 2022), https://www.9news.com/video/news/crime/raw-body-cam-video-shows-officers-pepper-spray-teen-who-wouldnt-calm-down/73-f6a35fef-6f36-42bd-8811-282bf521bf24; Lindsey Grewe, *WATCH: Body cam footage shows end of high-speed chase in Aurora, where 4 teens allegedly shot at police 20+ times*, KKTV 11 News (Aug. 11, 2024), https://www.kktv.com/2024/08/19/watch-body-cam-footage-shows-end-high-speed-chase-aurora-where-4-teens-allegedly-shot-police-20-times/.

access to BWC footage of the death of a civilian following any complaint of police misconduct.

In spite of this clear mandate, the City asks this Court to rewrite the statute to suit its own desired outcome. For the following reasons, the Court should reject the City's strained misinterpretations and affirm the District Court's correct and plain reading of § 24-31-902(2), C.R.S.

First, the District Court correctly interpreted the plain language of § 24-31-902(2)(a), C.R.S. when it ordered the City to disclose all three BWC videos, including audio. The statute explicitly requires the "release, upon request, [of] all unedited video and audio recordings" of "incidents in which there is a complaint of peace officer misconduct . . . through notice to the law enforcement agency involved in the alleged misconduct." § 24-31-902(2)(a), C.R.S. All such unedited video and audio recordings of the incident ***must be disclosed within twenty-one days of receipt*** of the request. *Id.* Here, the City does not dispute that a complaint of peace officer(s) misconduct was filed by Ms. Martinez's family, and that notice of the misconduct was provided to Lakewood Police. Notwithstanding Ion Media's request for all BWC footage of this tragic incident, the City improperly denied access citing the very statute that mandates disclosure and erroneously asserting that the BWC recordings were "juvenile delinquency records" as defined by the Children's Code.

Second, the City cites several privacy interests that it argues bar disclosure, but the statute explicitly commands that if such privacy interests are identified, the footage "shall be blurred to protect the substantial privacy interest while still allowing public release." § 24-31-902(2)(b)(II)(A), C.R.S. Thus, the District Court correctly concluded, upon finding Ms. Martinez enjoyed a substantial privacy interest in the depiction of her shooting death by police, that the BWC footage at issue should be released with her head and face blurred. The City's reliance on the provision that applies only where "blurring is *insufficient* to protect the substantial privacy interest," § 24-31-902(2)(b)(II)(B), C.R.S. (emphasis added), has no application to this case, pursuant to the District Court's clear finding that blurring is sufficient. Where, as here, a court has reviewed the footage *in camera* and determined that blurring will sufficiently protect the identified substantial privacy interest, the statute's provision affording limited release to a crime victim or his/her family, *see id.*, is also inapplicable.

Finally, the City takes issue with the District Court's finding that blurring of the BWC footage was sufficient to address Ms. Martinez's substantial privacy interests. The City argues that because the District Court purportedly made no specific findings identifying the privacy interests at stake or how blurring protected those interests, the court erred. The City's argument completely misrepresents the

record below. The District Court identified several substantial privacy interests, determined that facial blurring would address those interests, and otherwise considered and rejected the City's contention that audio should also be redacted. As the District Court correctly found, the statute does not contemplate redacting audio from BWC footage subject to its mandatory disclosure of "all unedited video and audio" recordings. Thus, the court's decision to blur Ms. Martinez's face was all that was required—and all that was permitted—under the plain language of the statute.

For the reasons set forth herein, Ion Media respectfully requests that this Court affirm the District Court's order commanding the City to release the entirety of the March 27, 2023 BWC footage with Ms. Martinez's head blurred.

ARGUMENT

I. The District Court correctly determined that BWC footage depicting the law enforcement killing of Ms. Martinez must be disclosed pursuant to § 24-31-902(2), C.R.S.

Standard of review and preservation on appeal:

Plaintiff-Appellee agrees that the issue before the Court—whether the City must release BWC footage of the March 27, 2023 incident pursuant to § 24-31-902(2), C.R.S.—was properly preserved below.

Matters of statutory interpretation, such as the issue presented here, are generally questions of law subject to *de novo* review on appeal. *People v. Sprinkle*, 2021 CO 60, ¶ 12; *Harris v. Denver Post Corp.*, 123 P.3d 1166, 1170 (Colo. 2005); *Dubois v. People*, 211 P.3d 41, 43 (Colo. 2009). This Court will reverse a District Court's ruling on a Rule 59 motion only upon finding an abuse of discretion. *Sch. Dist. No. 12 v. Sec. Life of Denver Ins. Co.*, 185 P.3d 781, 786 (Colo. 2008).

A court's "duty is to effectuate the General Assembly's intent, giving all the words of the statutes their intended meaning, harmonizing potentially conflicting provisions, and resolving conflicts and ambiguities in a way that implements the legislature's purpose." *Harris*, 123 P.3d at 1170. Moreover, the City bears the burden of demonstrating that the BWC footage is prohibited from disclosure.

Denver Publ'g Co. v. Bd. of Cnty. Comm'rs of Cnty. of Arapahoe, 121 P.3d 190, 199 (Colo. 2005).

a. The plain language of § 24-31-902(2)(a), C.R.S. mandates that all unedited BWC footage of the March 27, 2023 incident must be released.

In interpreting statutes, courts "seek to ascertain and give effect to the legislature's intent," looking "first to the plain language of the statute." *Sprinkle*, 2021 CO 60, ¶ 22. If the statutory language is clear, courts must apply it as written. *Id.* If the plain language is unambiguous, no further analysis is needed, and the statute must be applied as written. *Nieto v. Clark's Market, Inc.*, 2021 CO 48, ¶ 12. Here, the plain language of the Enhance Law Enforcement Integrity Act is unambiguous:

> For all incidents in which there is a complaint of peace officer misconduct by another peace officer, a civilian, or nonprofit organization, through notice to the law enforcement agency involved in the alleged misconduct, the local law enforcement agency or the Colorado state patrol ***shall release, upon request, all unedited video and audio recordings of the incident***, including those from body-worn cameras, dash cameras, or otherwise collected through investigation, to the public within twenty-one days after the local law enforcement agency or the Colorado state patrol received the request for release of the video or audio recordings.

§ 24-31-902(2)(a), C.R.S. (emphasis added).

The word “shall” mandates disclosure, upon request, of all unedited BWC footage (video and audio) if there is a “complaint of peace officer misconduct by … a civilian” and “notice” of the alleged misconduct is provided to the law enforcement agency. *See People v. Dist. Ct., 2d Jud. Dist.*, 713 P.2d 918, 921 (Colo. 1986) (“The generally accepted and familiar meanings of both ‘shall’ and ‘require’ indicate that these terms are mandatory.”); *A.S. v. People*, 2013 CO 63, ¶¶ 20–22. Indeed, the Colorado Supreme Court has consistently held that the use of the word “shall” in a statute is a mandatory connotation. *People v. Clark*, 654 P.2d 847, 848 (Colo. 1982); *Swift v. Smith*, 201 P.2d 609, 614 (Colo. 1948).

The City does not dispute that the aforementioned provision of the Act is applicable to the facts in this case. CF, p. 99. Indeed, the facts triggering application of the Act are undisputed. TR 05/24/24, p. 3:14–15 (“I don’t really know what we would do at the show cause hearing because there aren’t really any factual disputes.”). Ion Media’s request for access to the BWC footage pursuant to § 24-31-902(2)(a), C.R.S. thus triggered the Act’s mandatory disclosure requirement. *See* CF, p. 34.

Indeed, § 24-31-902(2)(a), C.R.S. mandates disclosure of all unedited video and audio of BWC footage "upon request" ***within twenty-one days***.[3] On September 26, 2023, Ion Media requested access to the BWC footage from the Lakewood Police Department pursuant to § 24-31-902(2)(a), C.R.S. CF, p. 34. Given that a complaint of misconduct was served by Ms. Martinez's family forty-one days prior to Ion Media's request, and notice was provided to Lakewood Police, the City was required by law to provide the BWC footage to Ion Media on or before October 17, 2023. The City's continuing decision to withhold the footage is in clear violation of the statute's unambiguous disclosure requirement.

The District Court's ruling below was correct, finding, upon application of the plain language of the Act, that "disclosure is mandatory, not discretionary." CF, p. 125. That court concluded in its May 24, 2024 oral order:

> Folks, I don't see that there is a choice. I see that it has to be disclosed in a plain reading of what the law and legislation has intended with respect to video and audio recordings depicting a death.

TR 05/24/24, p. 7:16–19.

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[3] The 2021 legislation changed the triggering condition for public release of BWC footage from a "complaint of misconduct" to a "request for release of the video or audio recordings." 2021 Colo. Sess. Laws 3054, 3056 (H.B. 21-1250), https://leg.colorado.gov/sites/default/files/documents/2021A/bills/sl/2021a_sl_458.pdf.

The City's argument that the District Court applied §§ 24-31-902(2)(a) and 24-31-902(2)(b)(I), C.R.S. in a manner that supersedes other portions of the statute holds no merit and takes issue with how the legislature drafted the Act. But this Court is not at liberty to rewrite the statute on behalf of the legislature. *See Farmers Ins. Exch. v. Bill Boom Inc.*, 961 P.2d 465, 469 (Colo. 1998) ("In construing statutory provisions, our obligation is not to make policy decisions but rather to give full effect to the legislative intent."). Here, the District Court properly construed § 24-31-902(2), C.R.S., giving all sections of the Act their proper effect and applying the plain language of the statute. CF, p. 124 (citing precedent that the court "consider the plain language of the statute in question, giving all undefined terms their ordinary and common meaning," and construing "shall" to "indicate that a course of action is mandatory"). The City takes issue with the statutory mandate that all unedited BWC video and audio "shall" be disclosed and asks this Court to find that the District Court's interpretation of "shall" as mandatory was error. Opening Br. at 22; CF, p. 22. But this is not error. The District Court's conclusion that the plain statutory language commands disclosure in this case is correct and should be affirmed.

b. Neither Ms. Martinez's family's opposition to the release of BWC footage nor her status as a minor bars disclosure under § 24-31-902(2), C.R.S.

Nothing in § 24-31-902(2), C.R.S. authorizes Ms. Martinez's family to bar the disclosure of the BWC footage at issue (whether her face is blurred or not). *See* Opening Br. at 34. To the contrary, the Act mandates disclosure regardless of whether a deceased person's family objects to release of blurred footage, as was ordered here (and especially when *no crime victim is depicted* in the BWC recordings at issue).[4] *See* § 24-31-902(2)(a), C.R.S. (for all qualifying incidents, law

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[4] The Enhance Law Enforcement Integrity Act repeatedly references Colorado's statutory scheme enacted pursuant to the "Victim's Rights Amendment of 1992," Colo. Const. art. II, § 16a ("VRA") (affording crime victims the right to be informed, present at all "critical stages" of a prosecution, and to be heard when relevant, and expressly mandating that "[a]ll terminology, including the term 'critical stages,' shall be defined by the general assembly"). *See, e.g.*, § 24-31-902(2)(b)(I), C.R.S. (stating that when a death is recorded the crime victim or surviving family members have the right, "***pursuant to section 24-4.1-302.5(1)(j.8)***, to *receive and review* the recording at least seventy-two hours *prior to public disclosure*" (emphasis added)); § 24-31-902(2)(c), C.R.S. (declaring that any hearing on the release of BWC footage under the Act shall be "considered a critical stage as defined in ***section 24-4.1-302*** and *gives victims the right to be heard pursuant to* **section 24-4.1-302.5**" (emphasis added)).

Article 4.1 of Title 24, enacted pursuant to the VRA, defines a "victim" as "any natural person *against whom any crime has been perpetrated or attempted*, unless the person is accountable for the crime or a crime arising from the same conduct or plan as crime is defined under the laws of this state or of the United States, *or, if such person is deceased or incapacitated, the person's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative.*" § 24-4.1-302(5), C.R.S. (emphasis added). Although that same

enforcement "shall release, upon request, all unedited video and audio recordings of the incident"). As discussed in Section II.b, *infra*, any video that raises substantial privacy concerns of a living person must be blurred to protect those interests, and disclosure is still required, in blurred fashion. § 24-31-902(2)(b)(II)(A), C.R.S. ("***Un***blurred footage shall not be released without the written authorization of the victim or . . . the victim's next of kin." (emphasis added)). Thus, consent of a crime victim's next of kin is only required for the release of ***unblurred*** BWC footage, *id.*, but no such consent is necessary in the present case where there is no victim of crime, and where the District Court—without objection from Ion Media—ordered that the subject footage be released ***with blurring***. The City's claim that a victim or victim's family's objection to disclosure may defeat the unambiguous mandatory disclosure requirement of the Act is wholly unfounded.

As the District Court correctly found, "with respect to the position of the City of Lakewood, while I recognize that their position was that inquiring with the family and the family's issues that they did not wish for this to be disclosed, that is *not the*

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provision concludes by stating "this definition of the term 'victim' shall apply only to this part 3 and shall not be applied to any other provision of the laws of the state of Colorado that refer to the term 'victim'," it is clear that by continually referencing that Act, specifically "[f]or purposes of *notification* under" the Victim's Rights Amendment, *id.*, the General Assembly intended the word "victim" in the Enhance Law Enforcement Integrity Act to mean "crime victim" as defined in Article 4.1 of Title 24. *See* § 24-1-101, C.R.S.

proper or the end of the analysis. It's a requirement. It shall be disclosed." TR 05/24/24, p. 7:20–25 (emphasis added). Indeed, the only portions of the statute that address consultation with a crime victim or his/her family arise in § 24-31-902(2)(b)(I), C.R.S., which grants crime victims and their families the right only to ***review*** the footage pursuant to the Victim's Rights Amendment, and § 24-31-902(2)(b)(II)(A)–(C), C.R.S., which specifies how law enforcement is to proceed when substantial privacy interests are implicated by the footage, including seeking a waiver *only from a living individual whose substantial privacy interests are implicated* and when blurring will not adequately protect those interests. The statute does not, however, include ***any*** requirement that law enforcement consult with a deceased person's family to weigh in on whether the footage should be released to the public. *See* § 24-31-902(2)(a), C.R.S.

Nor does the statute impose any different process or procedure when the victim of a crime captured on a BWC recording is a minor. *See* Opening Br. at 20. The City fails to point to any provision of the Act supporting its position that a "minor decedent's family is required to waive the decedent's privacy implications before public disclosure." Opening Br. at 14, 16, 24. Indeed, the Act's mandatory disclosure requirement makes no distinction between adult and minor victims; all that is necessary is that the footage pertain to alleged "peace officer misconduct"

that triggered a complaint. Once those conditions are met, the statute unambiguously provides that law enforcement "shall release" qualifying footage within twenty-one days of request. § 24-31-902(2)(a), C.R.S.

Accordingly, the City's argument that it "diligently engaged in the process of protecting the Juvenile Decedent's privacy rights as requested by the family," Opening Br. at 4, is erroneous. The City mistakes—and misstates—the law. ***No consent by Ms. Martinez's surviving family members was necessary for the release of blurred BWC footage*****,** precisely as the District Court ruled. *See* CF, p. 125 ("When . . . the video is blurred, family consent is not required."). The District Court did not err when it held that the BWC footage could not be withheld based on Ms. Martinez's family's opposition.

c. The March 27, 2023 BWC footage cannot be withheld because it depicts "gruesome bodily injury."

Contrary to Defendant-Appellant's argument, *see* Opening Br. at 28–31, § 24-31-902(2)(b)(II)(A), C.R.S. does not prohibit disclosure of BWC footage if it depicts gruesome bodily injury. As the Act provides:

> (II)(A) Notwithstanding any other provision of this section, any video that raises substantial privacy concerns for criminal defendants, victims, witnesses, juveniles, or informants, *including video depicting* . . . significantly ***explicit and gruesome bodily injury***, ***unless the injury was caused by a peace officer*** . . . ***shall be blurred*** to

> protect the substantial privacy interest while still allowing public release.

§ 24-31-902(2)(b)(II)(A), C.R.S. (emphasis added). Thus, this provision makes it clear that if footage subject to the Act depicts "gruesome bodily injury" caused by a peace officer, then the footage ***must*** be released, but ***it must be blurred*** to protect substantial privacy interests, just as is true (in the same provision) if the BWC "video depict[s] . . . a minor, including any images . . . that might undermine the requirement to keep certain juvenile [delinquency] records confidential." *Id.* And in all such instances, as noted above, a crime victim's "written authorization" (or that of his/her next of kin) is required only prior to release of "[u]nblurred footage." *Id.*

Applying this provision, the District Court correctly concluded that the "disclosure of BWC footage depicting gruesome bodily injury to minors is governed by C.R.S. § 24-31-902(2)(b)(II)(A)." CF, p. 126. Here, it is not disputed that Ms. Martinez's death was caused by a peace officer, compelling mandatory release, and Ion Media has not cross-appealed to challenge the District Court's order requiring Ms. Martinez's head be blurred prior to release. In every way, the District Court properly followed the process and procedure as contemplated by the legislature and set forth in § 24-31-902(2)(b)(II)(A), C.R.S.

d. No part of § 24-31-902(2), C.R.S. expressly limits access to juvenile records pursuant to § 19-1-304, C.R.S. of the Children's Code.

The City's assertion that the Enhance Law Enforcement Integrity Act implicates its duties to adhere to Colorado's Children's Code is baffling—§ 19-1-304, C.R.S. of the Children's Code simply ***does not apply*** to the BWC recordings at issue. First, no "proceedings" against Ms. Martinez were ever instituted under that Code—indeed, the City cites to none. Thus, as the District Court properly found, TR 05/24/24, pp. 6:19–7:10, under the plain language of that statute, there simply are no "juvenile delinquency records" in existence with respect to Ms. Martinez. *See* § 19-1-304(1)(a), C.R.S. (declaring non-public only "*court records* in juvenile delinquency *proceedings* or *proceedings* concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance" (emphasis added)). Furthermore, given Ms. Martinez's age and the severity of the crimes she was alleged to have committed, she would have had no "juvenile delinquency records" as a result of her March 27, 2023 confrontation with Lakewood Police, but only adult criminal records associated with her conduct on the date of her hypothetical non-fatal shooting.

The BWC recordings at issue are simply not "juvenile delinquency records" as defined by Title 19 of Colorado's Revised Statutes. Accordingly, the entirety of the City's arguments suggesting that Colorado's Children's Code somehow prevents

it from disclosing the BWC footage at issue is a complete red herring. The Children's Code has absolutely no application to ***any*** records in that agency's possession, custody, or control concerning Ms. Martinez. Accordingly, the District Court correctly held that § 24-31-902(2)(b)(II)(A) also does not apply to support nondisclosure:

> Defendant first argues that the Court erred when it "concluded that C.R.S. § 24-31-902(2)(b)(II)(A) does not apply to the BWC video and other video requested by Plaintiff as it related to the legal requirements surrounding juvenile records." *Motion* at 7. The Court has fully considered this argument and discerns no error in its order.

CF, p. 124. Thus, while the District Court fully considered the City's argument, it correctly concluded that the BWC footage at issue does not constitute the type of juvenile records contemplated under § 19-1-304, C.R.S. that can be withheld from the public.

In sum, for the reasons set forth hereinabove, the video and audio footage of the March 27, 2023 incident cannot be withheld by the City.

e. The legislative history of the Enhance Law Enforcement Integrity Act supports disclosure.

The Enhance Law Enforcement Integrity Act's clear purpose to promote greater transparency and accountability within law enforcement is evident from the legislative history. *See* 2020 Colo. Sess. Laws 445, 446–49 (S.B. 20-217),

https://leg.colorado.gov/sites/default/files/documents/2020A/bills/sl/2020a_sl_110.pdf. In introducing the bill, cosponsor Senator Rhonda Fields underscored the importance of providing the public with access to footage depicting law enforcement misconduct, stating: "We've seen on the news the Eric Gardner video in New York City—he said he couldn't breathe, he ended up losing his life and . . . they did not release the videotape, the body cam, until eight months later. ***This bill intends to correct that***." *Enhance Law Enforcement Integrity Act: Hearing on S.B. 20-217 Before the S. State, Veterans, & Mil. Affs. Comm.*, 72d Gen. Assemb. (Colo. June 4, 2020), at 4:12:25–4:13:05, https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20200604/-1/10124 (emphasis added) (statement of Sen. Rhonda Fields, Committee Vice Chair).

Over the course of four days, the bill moved through the Senate and House Committees, receiving testimony from victim and community advocates, legal experts, and law enforcement representatives, with all expressing support for the bill's prospects for achieving greater transparency in law enforcement activity. *See generally* Watch & Listen: Colorado Senate, Colo. Gen. Assemb., https://leg.colorado.gov/watch-listen (click "Listen to Senate"; then select dates June 4–8, 2020). Amendments were introduced to address privacy concerns for victims, minors, witnesses, and confidential informants whose interactions with law

enforcement may be captured in BWC footage set for public release. *Id*. To address those concerns, the legislature added § 24-31-902(2)(b)(II), C.R.S., discussed *supra*, which provides that BWC footage subject to the Act "shall be blurred to protect the substantial privacy interest while still allowing public release" when the footage "raises substantial privacy concerns." § 24-31-902(2)(b)(II), C.R.S.

In announcing his support for this amendment, the former Republican Minority Leader, Senator Chris Holbert—who had expressed reservations about the release of unedited videos—stated, "We want public transparency and [] I'm so grateful for this amendment because . . . in my layperson [] opinion, and my reading of this amendment, [it] is going to provide the [] reasonable correct protection for those people." *Enhance Law Enforcement Integrity Act: Second Reading of S.B. 20-217 Before S. Reg. Sess.*, 72d Gen. Assemb. (Colo. June 8, 2020), at 4:05:00–4:06:00, https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20200608/-1/5502.

This legislative history confirms the plain meaning of the statute—a mandatory disclosure regime with blurring as a privacy safeguard. This Court can and should look to this legislative history for guidance in interpreting the Act. *Harris*, 123 P.3d at 1170 (when interpreting statutes this Court's "duty is to effectuate the General Assembly's intent"). The District Court correctly

determined that the language of § 24-31-902(2), C.R.S. requires that the BWC footage depicting the law enforcement killing of Ms. Martinez must be disclosed.

II. The District Court correctly concluded that any privacy interests in the BWC footage does not bar its disclosure when the footage is blurred.

Standard of review and preservation on appeal:

Plaintiff-Appellee agrees that the issue—the District Court correctly found that applying facial blurring to the BWC footage protects Ms. Martinez's privacy interests while permitting disclosure—is preserved on appeal.

The District Court's determination that facial blurring was sufficient to protect Ms. Martinez's substantial privacy interests is a conclusion of law, which is reviewed *de novo*. *In re Marriage of de Koning*, 2016 CO 2, ¶ 17 ("We review a trial court's findings of fact for clear error or abuse of discretion, but we review the legal conclusions the trial court drew from those findings *de novo*."). Rule 59 rulings, also appealed here, are reviewed for abuse of discretion.

a. The District Court correctly determined that the Act mandates disclosure of BWC footage, even when substantial privacy interests are implicated.

The unambiguous text of § 24-31-902(2)(b)(II)(A), C.R.S. makes clear that when a substantial privacy interest is identified, the footage "*shall* be blurred to

protect the substantial privacy interest *while still allowing public release*." § 24-31-902(2)(b)(II)(A), C.R.S. (emphasis added). In so commanding, the legislature repeats in sub-part 902(2)(b) what it first prescribes in sub-part 902(2)(a)—that disclosure is mandatory. *Compare* § 24-31-902(2)(a), C.R.S. (law enforcement "*shall* release, upon request, all unedited video and audio recordings of the incident (emphasis added)), *with* § 24-31-902(2)(b), C.R.S. (footage raising "substantial privacy concerns" "*shall* be blurred to protect the substantial privacy interest *while still allowing public release*" (emphasis added)).

In this case, the District Court made several key findings regarding the substantial privacy interests of Ms. Martinez. After reviewing the BWC footage at issue *in camera*, the court identified substantial privacy concerns with respect to "the last words, moments, breaths of Ms. Martinez," TR 05/24/24, p. 16:16–20; the depiction of "gruesome bodily injury to a minor" caused by a police officer, CF, p. 127 (citing § 24-31-902(2)(b)(II)(A), C.R.S.); and, finally, the family's wishes to protect Ms. Martinez's privacy, TR 05/24/24, p. 7:20–25. The court then applied the Act to hold that disclosure was not prohibited, but the footage must be blurred to protect the privacy interests the court expressly recognized. CF, p. 127; TR 05/24/24, p. 7:11–19.

Specifically, the District Court ordered the City to release the BWC footage but "blur out Ms. Martinez's head before making any disclosure," explaining that although "*the [c]ourt was not required to order blurring* because the gruesome bodily injury in question was caused by a peace officer," it had determined that blurring was necessary and appropriate given the additional substantial privacy interests at issue. CF, p. 127 (emphasis added); *see also* TR 05/24/24, p. 12:3–7 ("And I'm not making a finding that the blurring is insufficient. I think that it's very clear that the video shall be released and it's just a question with respect to the privacy concern, and specifically a substantial privacy concern, whether there is blurring."). In so ruling, the District Court correctly applied the Act to mandate disclosure and require blurring to address the substantial privacy interests it had identified.

b. The City misstates the law by arguing that § 24-31-902(2)(b)(II)(A)–(C), C.R.S. requires Ms. Martinez's next of kin to waive her privacy rights before releasing the BWC footage in a blurred fashion.

The City takes issue with the District Court's interpretation of § 24-31-902(2)(b)(II)(A)–(C), C.R.S., arguing that (i) Ms. Martinez's family is required to waive substantial privacy interests in the BWC footage before the City may disclose that footage (even in a blurred state), and (ii) such waiver must be in writing. Opening Br. at 14–16. However, there is simply no provision of the Act that

grants—or even suggests—a decedent's surviving family members veto power over disclosure. The City's assertion that some privacy interests must be waived by Ms. Martinez's family before blurred footage can be released is completely unsupported by the unambiguous language of the statute. Aside from the aforementioned waiver provision in § 24-31-902(2)(b)(II)(B), C.R.S., which allows the crime victim or his/her family to ***waive blurring***, the other provisions of the Act discussing written waiver arise in subsections (2)(b)(II)(A) and (2)(b)(II)(C), and neither grant a crime victim or his/her family the authority to deny public access to footage subject to the Act.

The City's reliance on § 24-31-902(2)(b)(II)(B), C.R.S. as purportedly barring disclosure is wholly misplaced. *See* Opening Br. at 23–24. That section states:

> If blurring is insufficient to protect the substantial privacy interest, the local law enforcement agency or the Colorado state patrol shall, upon request, *release the video to* the victim or, if the victim is deceased[,] . . . to the victim's [next of kin or] other lawful representative within ***twenty days*** after receipt of the complaint of misconduct.
>
> In cases in which the recording is not released to the public pursuant to this subsection (2)(b)(II)(B), the local law enforcement agency shall notify *the person whose privacy interest is implicated*, if contact information is known, within twenty days after receipt of the complaint of misconduct, and inform *the person* of *his or her right* to waive the privacy interest.

§ 24-31-902(2)(b)(II)(B), C.R.S. (emphasis added). Since § 24-31-902(2)(a), C.R.S. requires release of the video "within twenty-one days after . . . the request for release of the video or audio recordings," subsection (b)(II)(B) has a twenty-day deadline—one day shorter—to ensure that a crime victim and his/her family can view the footage ***before it is released to the public***. Subsection (b)(II)(B) also allows a living person "whose privacy interest is implicated" the opportunity to waive that individual's privacy interest that may lead to blurring.

Properly construed, subsection 902(2)(b)(II)(B) does not require "the victim's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative" to waive Ms. Martinez's privacy rights in order to permit release of the BWC footage, as the City claims. Opening. Br. at 3–4 (erroneously claiming that "§ 24-31-902[(2)(b)(II)(B),] C.R.S. require[s] that the family waive *their rights* to publicly release the video" (emphasis added)). The family has no such "rights" under the Act. Only "*the person whose privacy interest is implicated*," meaning a living "person," has such privacy rights, and the attendant right to waive that privacy interest.

The only other portion of the Act referencing waiver arises in § 24-31-902(2)(b)(II)(C), C.R.S. In cases where a substantial privacy interest has been identified, which blurring would not adequately protect, and *the person depicted in*

the video "waive[s] in writing the individual privacy interest" that person possesses, the Act requires law enforcement to release the footage notwithstanding that blurring is insufficient. § 24-31-902(2)(b)(II)(C), C.R.S. In this manner, again, the legislature provides a mechanism for BWC footage subject to the Act to be made public, in accordance with the clear transparency goals of the statute.

c. The City failed to establish additional substantial privacy interests in the BWC footage.

The City argues the District Court overlooked "numerous privacy concerns contained in the BWC footage, finding instead that an exception to one privacy implication nullified a need for any privacy protection," Opening Br. at 28. As a threshold matter, even if, *arguendo*, the District Court had accepted the City's further privacy unstated arguments, the outcome would have remained the same—the court would have required blurring Ms. Martinez's head and face prior to releasing the BWC footage to the public. § 24-31-902(2)(b)(II)(B), C.R.S. The statute does not require the exhaustive exercise the City demands, Opening Br. at 28, and the City cites no case law or references any statutory authority that would have required the District Court to take a different approach.

Indeed, because the City bore the burden of proof to demonstrate below that any purported privacy interests would be implicated by release of the blurred BWC footage (as the court ordered), and the City completely failed to make any such

showing, it cannot now be heard to complain that the court failed to make findings that the City failed to provide support for. *See Horton v. Suthers*, 43 P.3d 611, 618 (Colo. 2002) ("Invited error is a cardinal rule of appellate review applied to a wide range of conduct. It . . . prevents a party from inducing an inappropriate or erroneous [ruling] and then later seeking to profit from that error." (citation omitted)).

It is undisputed that the City failed to establish any further "substantial privacy interest" in the BWC footage at issue beyond those the District Court expressly identified. *See* CF, p. 127. Moreover, the City's argument that Ms. Martinez enjoys any right to privacy after her demise is at odds with Colorado law. It is firmly established that any right to privacy an individual may possess expires upon that person's death, so it is impossible to violate the privacy of one who is deceased. *See, e.g.*, Restatement (Second) of Torts § 652I (Am. L. Inst. 1977) ("Except for the appropriation of one's name or likeness, an action for invasion of privacy can be maintained only by *a living individual* whose privacy is invaded." (emphasis added)); *Denver Publ'g Co. v. Bueno*, 54 P.3d 893, 896 (Colo. 2002) (citing Restatement (Second) of Torts § 652A–E (Am. L. Inst. 1977)); *Lewis v. McGraw-Hill Broad. Co.*, 832 P.2d 1118, 1121 (Colo. App. 1992) (same). Ms. Martinez has no lawfully cognizable privacy interest, nor can one be asserted on Ms. Martinez's

behalf by her family. *Id.*; *see also* Colo. Civ. Jury Instruction 28:1, Source and Authority Note 2 (so stating).

Second, even if Ms. Martinez had *not* died as a result of her encounter with Lakewood Police, the BWC footage would still not be subject to any cognizable expectation of privacy under settled law. If a person steps onto a public street and engages in conduct in plain view of anyone present on a nearby sidewalk or other public thoroughfare (as occurred here), those activities are not entitled to any expectation of privacy, irrespective of that person's age. *See* Restatement (Second) of Torts § 652D cmt. b (Am. L. Inst. 1977) ("[T]here is no liability for giving further publicity to what the plaintiff himself leaves open to the public eye. Thus he normally cannot complain *when his photograph is taken while he is walking down the public street* and is published in the defendant's newspaper.").

In addition, those who commit crimes or engage in other activity that understandably draws public attention have no claim to invasion of privacy—regardless of their age—when such activities generate news coverage or other publicity. The Restatement (Second) of Torts § 652D, cmt. f (Am. L. Inst. 1977) establishes that "[t]hose who commit crime or are accused of it may not only not seek publicity but may make every possible effort to avoid it, but they are nevertheless persons of public interest, concerning whom the public is entitled to be

informed." *See also Robert C. Ozer, P.C. v. Borquez*, 940 P.2d 371, 378 (Colo. 1997) (holding that one "requirement of a tort claim for invasion of privacy in the nature of unreasonable publicity given to one's private life is that the facts disclosed are not of legitimate concern to the public"). It is settled law that "[c]riminal activity is . . . not protected by the right to privacy." *Nilson v. Layton City*, 45 F.3d 369, 372 (10th Cir. 1995). Thus, if Ms. Martinez were alive today, she would enjoy no cognizable right of privacy with respect to the BWC footage recording her criminal activity on a public street (and the garage's grounds) "in plain view" of the public eye.

With regard to juvenile delinquency records, the statutory confidentiality is not premised on any purported "privacy" rights of minors, but on the public interest in affording youthful offenders the opportunity to be rehabilitated and later, as adults, not be permanently branded by their criminal conduct before they reach the age of maturity. *See Bostelman v. People*, 162 P.3d 686, 691 (Colo. 2007) ("The juvenile justice system is primarily designed to provide guidance, rehabilitation, and restoration for the juvenile and the protection of society, rather than adjudicating criminal conduct and sanctioning criminal responsibility, guilt, and punishment." (citing *Kent v. United States*, 383 U.S. 541, 554–55 (1966))); *In re T.B.*, 2016 COA

151M, ¶¶ 87–88 (Fox, J., dissenting) ("[t]he juvenile justice system's goals are to rehabilitate—not to irreparably brand—juveniles").

In any case, as the District Court properly found, no "juvenile delinquency records" exist with respect to Ms. Martinez. TR 05/24/24, p. 7:7–10. And the court correctly held that "the Children's Code does not reference BWC footage of minor children." CF, p. 125. After considering the City's array of arguments with respect to § 19-1-304, C.R.S., including subsection (b.5), the District Court correctly found: "[E]ven if the Children's [C]ode *did* govern this issue, it would be well within the Court's discretion to order the BWC footage disclosed." CF, p. 126 (emphasis added). For all these reasons, Ms. Martinez's status as a minor has no bearing with respect to privacy here.

III. The District Court properly found that blurring of the BWC footage was sufficient to address substantial privacy interests.

Standard of review and preservation on appeal:

The District Court's determination that blurring was sufficient under the Enhance Law Enforcement Integrity Act to protect privacy interests is a question of statutory interpretation reviewed by this Court under the *de novo* review standard. *Dubois*, 211 P.3d at 43. However, should this Court review the District Court's determination that blurring was sufficient as a finding of fact, it must be reviewed for clear error or abuse of discretion. *In re Marriage of de Koning*, 2016 CO 2, ¶ 17

(“We review a trial court’s findings of fact for clear error or abuse of discretion, but we review the legal conclusions the trial court drew from those findings *de novo*.”). Rulings under C.R.C.P. 59 are reviewed for abuse of discretion.

Appellee agrees that this issue was properly preserved.

Despite the City’s “analysis,” without reasoning, that blurring the BWC footage would be insufficient, TR 05/24/24, pp. 10:24–11:3, the District Court found—after review of all the pleadings, holding two status conferences, a show cause hearing, and conducting *in camera* review of four videos submitted by the City—that blurring Ms. Martinez’s head and face was *sufficient*. *Id.* at 12:3–9, 13:21–25. Indeed, after *in camera* review, the court need only find that blurring will protect an identified substantial privacy interest. § 24-31-902(2)(b)(II)(A), C.R.S. The Act contains no requirement that the court make a finding as to the sufficiency of the blurring or engage in an analysis to balance the sufficiency of its determination. The Court’s careful conclusion is thus consistent with the plain language of the Act and the legislature’s intent, *see supra* Section I.a.; thus, the City’s argument that the court erred as a matter of law is not supported. The District Court’s determination that blurring was required under the Act to protect identified substantial privacy interests was correct as a matter of law. *See* CF, p. 127.

The City makes no argument that the court's *in camera* review of the three BWC footage recordings resulted in clearly erroneous conclusions as to their content. Of the numerous alleged errors that the City claims the District Court committed, it does not take any issue with the court's determination as to what the BWC footage portrays. The court articulated its finding as to what on the video required blurring:

> The Court finds that to ensure the substantial privacy interest, not just her face, but the entirety of her head, particularly the Court finds that and recalls in watching the body-worn camera, Ms. Martinez has a very distinct color in hair, while that is not in and of itself a privacy interest, the Court finds that it would be appropriate to blur the entirety of her head for purposes of ensuring any privacy interest while still allowing the public release.

TR 05/24/24, p. 9:8–15. It is thus evident that the court did not commit manifest, clear error as to its *in camera* review of the BWC footage. *M.D.C./Wood, Inc. v. Mortimer*, 866 P.2d 1380, 1384 (Colo. 1994) ("The findings of the trier of fact must be accepted on review, unless they are so clearly erroneous as not to find support in the record." (quoting *Page v. Clark*, 592 P.2d 792, 796 (Colo. 1979))); *see also People v. Ramirez*, 155 P.3d 371, 380 (Colo. 2007) (the ruling of the trial court "will not be overturned unless manifestly erroneous"). Notably, the City offered no

evidence (or even argument) below,[5] nor to this Court, explaining ***why*** "blurring is insufficient to protect the privacy interests" at stake. Accordingly, this argument, too, is subject to the "invited error" doctrine. *Horton*, 43 P.3d at 618. Having not made that showing in its Opening Brief, the City cannot attempt to do so in its Reply. *People v. Czemerynski*, 786 P.2d 1100, 1107 (Colo. 1990) ("Issues not raised in an appellant's original brief will not be considered when raised for the first time in the reply brief." (citing *Davis v. Pursel*, 134 P. 107 (Colo. 1913))); *Grohn v. Sisters of Charity Health Servs. Colo*., 960 P.2d 722, 727 (Colo. App. 1998) (same).

The City argues, however, that the District Court erred because it did not know at the time it reviewed the BWC footage that the incident involved a minor, and that its decision as to the reason for blurring was therefore erroneous, but this argument fails. Opening Br. at 12, 16, 26. As an initial point, the District Court noted in its July 3, 2024 order that the City "mischaracteriz[ed]" its ruling on this issue:

> While the Court did, in its oral findings, note that it is not apparent from the BWC footage whether Ms. Martinez was a minor, that observation was not relevant to the Court's broader order. Instead, the Court's order recognizes that because the BWC footage does depict ***gruesome bodily injury to a minor***, it does implicate

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[5] Indeed, in its Answer to the First Amended Complaint below, the City asserted that "to preserve decedent's privacy it would be *necessary to blur the entirety of the decedent* and mute portions of audio where decedent can be heard." CF, p. 83 ¶ 42 (emphasis added). The District Court agreed only with the City's request to "blur the entirety of" Ms. Martinez's head.

> substantial privacy concerns. That finding is consistent with the plain text of C.R.S. § 24-31-902(2)(b)(II)(A). In recognition of those privacy concerns, the Court ordered that Defendant blur out Ms. Martinez's head before making any disclosure to Plaintiff.

CF, p. 127 (emphasis added). Thus, the court fully recognized that blurring was needed because the BWC footage depicts "gruesome bodily injury ***to a minor***." *Id.* (emphasis added). Moreover, the City articulates no basis for arguing that the court below should have required more redaction of the BWC footage to address Ms. Martinez's minor status—nor could it. The Act does not require greater or lesser blurring to address an identified substantial interest, *see* § 24-31-902(2)(b)(II)(A), C.R.S.

Additionally, the City's argument that the District Court erred because it failed to make a finding with respect to the muting or redacting of the audio on the BWC footage, Opening Br. at 16, 33, is unfounded and misstates the record. First, the District Court did make a finding as to whether the audio could be muted. The court made the careful determination that although there were privacy concerns with respect to the audio, it was only permitted under the Act to blur the video. TR 05/24/24, p. 25:7–17. It held:

> FREEMAN: [T]he other finding that the City would like made is, there's audio that's associated with this . . . what does the Court want us to do in terms of audio in terms of this order?

> THE COURT: There's no guidance. It talks about, in the statute, in terms of what I can blur out, which as you all know, blurring is to vision, there's no guidance as to audio. I share the same concerns. And just as a human, what I've heard on the video, the last moments, the last breaths of life of Ms. Martinez are incredibly difficult for someone to hear. I don't have the authority to do anything further.

Id. at p. 14:3–13. The court's ruling was correct. There is no requirement pursuant to § 24-31-902(2), C.R.S. for BWC footage audio to be altered. Instead, the statute explicitly states that all ***video and audio*** depicting a death must be provided upon request, and with respect to blurring footage, it states "any ***video*** that raises substantial privacy concerns . . . shall be blurred." § 24-31-902(2)(b)(II)(A), C.R.S. (emphasis added). Defendant-Appellant can point to no contrary authority. Although the audio of Ms. Martinez's final words and breaths is gut wrenching, the District Court did not err by ordering blurring to the video alone.

In sum, the District Court's finding that blurring was sufficient to protect the substantial privacy interests it identified in the BWC footage must be affirmed.

CONCLUSION

For the reasons set forth hereinabove, the District Court properly interpreted § 24-31-902(2), C.R.S. and mandated disclosure of the BWC footage to Ion Media with blurring. Accordingly, Ion Media respectfully requests that this Court affirm

the District Court's order and immediately order disclosure of the March 27, 2023 BWC footage to Ion Media.

Dated: December 27, 2024

Respectfully submitted,

By */s/ Rachael Johnson*

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December, 2024, a true and correct copy of the foregoing **Plaintiff-Appellee's Answer Brief** was filed and served on the following counsel via the Colorado Courts E-File & Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

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