

No. \_\_\_\_\_

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IN THE  
Supreme Court of the United States

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KYLE S. MATTHEWS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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*On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Seventh Circuit*

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

A police officer may rely on an invalid search warrant if he acts with objective good faith, but not when the warrant lacks an indicia of probable cause supporting that evidence of a crime will be found in the place to be searched.

- 1) Where a search warrant affidavit lacks probable cause, in that it contains only the officer's "belief" as to the existence of a connection between the defendant or his offense and the place to be searched, along with the officer's general assertion that his information came from unspecified third parties and police officers, is this information sufficient to constitute "an indicia" of probable cause, such that an officer could have reasonably relied on the warrant?
- 2) In determining whether a warrant is based on information that constitutes an indicia of probable cause, is the fact that an officer consulted with the prosecutor in preparing a warrant affidavit a relevant consideration?

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## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner Kyle S. Matthews respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

### **DECISION BELOW**

The Seventh Circuit's decision is published at 12 F.4th 647 (7<sup>th</sup> Cir. 2021), and appears at Appendix 1 to this Petition.

### **JURISDICTIONAL STATEMENT**

The United States District Court for the Southern District of Illinois originally had jurisdiction pursuant to 18 U.S.C. § 3231, which provides exclusive jurisdiction of offenses against the United States.

Petitioner timely appealed his conviction and sentence to the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). The Seventh Circuit affirmed Petitioner's conviction and sentence on August 27, 2021.

Petitioner seeks review in this Court of the Seventh Circuit's published opinion affirming Appellant's conviction and sentence pursuant to 28 U.S.C. § 1254(1). This Petition is filed within 90 days of the Seventh Circuit's opinion affirming the district court's August 27, 2021 judgment.

### **CONSTITUTIONAL PROVISIONS INVOLVED**

The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT OF THE CASE

Factual background. Police executed a search warrant on a property where Petitioner Matthews lived in a camper trailer. The property consisted of a former restaurant and a nearby collection of buildings, vehicles, and dumpsters. The search warrant complaint described the place to be searched as:

The structure of the former Fin and Feather restaurant, motor home and camper trailers, and all outbuildings located at 21000 North Emerald Road . . . and all other structures and things situated thereon . . . the motor home and camper trailer are situated within approximately 50 feet to the east behind the former Fin and Feather restaurant building. Said motor home and camper trailer are believed to be occupied by persons including Kyle S. Matthews . . . who is also believed to have access to all other structures and building situated on the premises to be searched.

(Doc. 29-1).

The judge issuing the search warrant heard testimony from Detective Becherer, in addition to reviewing the warrant application. The testimony included the following exchange describing the collection of places comprising the property to be searched, as well as Detective Becherer's "understanding" that Petitioner had access to all of the structures and vehicles there.

Q: You're intending to go into the entire property where he's been staying which is at the Fin and Feather restaurant?

A: That's right.

Q: There is a motor home, a camper, and several dumpsters and vehicles in addition to the primary structure of the former restaurant?

A: Right.

Q: There's also an outbuilding?

A: Yes.

Q: It's your intent that – your understanding Mr. Matthews has access to all those places?

A: Right.

Q: It's your intent to go search all places and seize any evidence of the crimes described?

A: That's right.

(Doc. 43 p. 7-8, citing Doc. 29-3, at 9).

The evidence obtained in the search led to a three-count indictment against Petitioner. (Doc. 1). On August 17, 2018, Defense Counsel filed a Motion to Suppress evidence, arguing the information given to the judge in support of the search warrant lacked any facts to support a nexus between Petitioner and each of the structures and vehicles comprising the property to be searched, nor any basis of knowledge from which to conclude Petitioner had access to each of those places. (Docs. 28-29). Defense Counsel cited, *inter alia*, *Illinois v. Gates*, 462 U.S. 213, 238–39 (1983), which describes the issuing judge’s task as “simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.*

Defense Counsel also argued the good faith exception did not apply: “Given the deficiencies in the affidavit, a reasonably well-trained officer would have known that the search was illegal despite Judge Brandmeyer’s authorization. Therefore, the Good Faith Exception to the Fourth Amendment is inapplicable, and the evidence seized during the search . . . must be suppressed.” (Doc. 29 p. 11). Government Counsel responded, briefly arguing probable cause existed, but primarily arguing Officer Becherer relied on the search warrant in good faith, so the exclusionary rule did not apply. (Docs. 43-45).

The district court found the warrant was not supported by probable cause to believe that any of the suspected crimes were linked to the property because the affidavit provided no factual basis for the belief that Petitioner resided at the Fin and Feather property. Furthermore, the affidavit failed to provide any nexus between the criminal activity and that property; it offered no indication Petitioner ever was observed at that property, or that any illegal activity took place there, or that evidence would likely be found there. (Doc. 48).

However, the district court found the good-faith exception to the exclusionary rule applied, and denied the motion to suppress. (Doc. 48). Defense Counsel filed a motion for rehearing because the district court’s finding of good faith was based on information not presented to the magistrate, and which pertained to Detective Becherer’s subjective good faith. (Doc. 50). The District Court agreed it should not have relied on a subjective good faith standard and on materials not presented to the reviewing judge. However, the district court again denied suppression, finding “the affidavit and supporting testimony were not so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” (Doc. 54; *citing United States v. Leon*, 468 U.S. 897, 923 (1984) (citation omitted)).

Petitioner Matthews entered a conditional plea to possessing an unregistered short-barreled rifle, preserving his right to appeal of the denial of the motion to suppress the evidence. (Docs. 58-59). On August 26, 2020, the district court entered a final conviction and judgment, sentencing Petitioner Matthews to three-year probation. (Doc. 96). Defense Counsel appealed to the Seventh Circuit Court of Appeals on September 3, 2020. (Doc. 104).

Seventh Circuit decision. On appeal, Petitioner argued the search warrant application’s deficiencies rendered it so lacking in indicia of probable cause that official belief in its existence was entirely unreasonable, *citing United States v. Leon*, 468 U.S. 897, 923 (1984). The Seventh Circuit considered “whether an officer in Detective Becherer’s situation could rely reasonably on the warrant issued by the state court judge as valid authorization to search the Fin & Feather property,” and concluded the warrant contained an indicia of probable cause. Even though the affidavit asserted only Detective Becherer’s conclusory belief, with no supporting articulable facts, connecting Petitioner or his offense with Fin and Feather property, the Seventh Circuit found “Detective Becherer’s affidavit cannot fairly be characterized as wholly conclusory. It

explained, albeit in broad strokes, how the officer came to this belief that Mr. Matthews lived on the property—"by personal interviews and ... through other law enforcement officers.””

The Seventh Circuit also brushed aside Petitioner’s argument the affidavit failed to provide a basis for concluding he had access to all of the varied structures and vehicles on the Fin and Feather property, based on the belief Petitioner resided somewhere on the property: “A reasonable judge or officer still might well assume that, here, the person living in a camper has control over the other structures on the property in much the same way as the owner of a house is most likely to control a shed or detached garage in close proximity to the house.” *Id.* at 656.

Finally, the Seventh Circuit held that Detective Becherer’s decision to consult with the State’s attorney before preparing the complaint for a search warrant supported his “objective good faith,” and also bolstered the finding that the affidavit contained an “indicia of probable cause.”

The Supreme Court has held that attorney (and magistrate) approval of a warrant is not “dispositive,” but it is “certainly pertinent in assessing whether [an officer] could have held a reasonable belief that the warrant was supported by probable cause.” *Messerschmidt*, 565 U.S. at 554–55, 132 S.Ct. 1235. That officers consulted with attorneys before seeking a warrant featured prominently in both *Leon*, 468 U.S. at 902, 104 S.Ct. 3405, and its companion case, *Massachusetts v. Sheppard*, 468 U.S. 981, 985, 104 S.Ct. 3424, 82 L.Ed.2d 737 (1984). We have repeatedly credited an officer’s choice to confer with an attorney before seeking a warrant as evidence of good faith. \* \* \* the involvement of the State’s Attorney in preparing and approving the warrant and affidavit simply bolsters our conclusion that these documents contained sufficient indicia of probable cause to permit Detective Becherer to rely on the warrant.”

*Id.* at 656–57.

Hence, the Seventh Circuit affirmed the district court’s denial of Petitioner’s motion to suppress.

## REASONS FOR GRANTING THE PETITION

The Fourth Amendment says “no Warrants shall issue, but upon probable cause.” In a criminal trial, evidence obtained in violation of the Fourth Amendment may be excluded to deter police misconduct. *United States v. Calandra*, 414 U.S. 338, 354 (1974). In *United States v. Leon*, 468 U.S. 897 (1984), this Court held the exclusionary rule does not apply when a police officer acts in objectively reasonable reliance on a search warrant issued by a neutral magistrate, even if the warrant is later determined to lack probable cause. *Leon*’s good faith doctrine is not boundless, and does not apply, *inter alia*, when the warrant lacks an indicia of probable cause. *Id.* at 898-99. Probable cause requires “a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

I. This Court should grant the Writ and reverse the Seventh Circuit’s holding that a search warrant affidavit lacking any articulable facts supporting that the defendant or his offense had any connection to the property to be searched nevertheless contains an indicia of probable cause, based on a police officer’s statement of belief that the defendant lived on the property and had access to all of the varied structures there, as well as the officer’s general assertion that the information in the affidavit was obtained from personal interviews or from other police officers.

A. The Seventh Circuit’s holding is contrary to this Court’s precedent. This Court directs a probable-cause determination must be made by a neutral magistrate, in order “to insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause.” *Wong Sun v. United States*, 371 U.S. 471, 481-482 (1963). The neutral magistrate must review, in particular, the basis of knowledge the officer’s information and information supplied by third parties, in order to determine its veracity: “The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the

circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). *United States v. Leon*, 468 U.S. 897, 915 (1984) directs the good faith doctrine cannot save “a warrant based on an affidavit that does not ‘provide the magistrate with a substantial basis for determining the existence of probable cause,’” and warns the magistrate’s “action cannot be a mere ratification of the bare conclusions of others.” *Id.*

Petitioner’s case presents the precise scenario *Leon* excluded from application of the good faith doctrine: the information presented to the magistrate was wholly lacking in any specific facts from which a magistrate could independently determine the existence of probable cause, that is, a fair probability evidence would be found on the Fin and Feather property. The Seventh Circuit’s finding the good faith doctrine applied is contrary to *Leon*. The Seventh Circuit’s holding is also contrary to *Wong Sun* and *Gates*, in that it permits an officer to rely on a warrant that provides no basis for a neutral magistrate to review whether probable cause existed.

This Court has applied the good faith doctrine in a case where a warrant was based on less than probable cause, but relief on information sufficient to constitute an “indicia” of probable cause. This Court’s opinion makes clear an “indicia” of probable cause must be based on articulable facts presented to a judge and/or inferences from those facts, even if they fall short of probable cause. As this Court stated in *Messerschmidt v. Millender*, 565 U.S. 535 (2012):

Even if the scope of the warrant were overbroad in authorizing a search for all guns when there was information only about a specific one, that specific one was a sawed-off shotgun with a pistol grip, owned by a known gang member, who had just fired the weapon five times in public in an attempt to murder another person, on the asserted ground that she had “call[ed] the cops” on him. \* \* \* Evidence of one crime is not always evidence of several, but given Bowen’s possession of one illegal gun, his gang membership, his willingness to use the gun to kill someone, and his concern about the police, a reasonable officer could

conclude that there would be additional illegal guns among others that Bowen owned.

*Id.* at 548-49. *Messerschmidt* illustrates this Court’s intention that an indicia of probable cause must be rooted in specific, articulable facts probative of probable cause, regardless of the steps an officer may have taken to ensure probable cause existed. The Seventh Circuit’s finding of an indicia of probable cause in the absence of such facts is contrary to this Court’s precedent.

B. The Seventh Circuit’s holding perpetuates a circuit split, with the Seventh Circuit in the minority, which needs this Court’s attention. Officer Becherer’s only asserted basis for believing Petitioner had a connection to the Fin and Feather property was a general statement in the affidavit that his information therein came from personal interviews or other police officers-- that is, from other, unspecified individuals, whose basis of knowledge was unstated. Despite the absence of any articulable facts on which a judge could make an independent evaluation of probable, the Seventh Circuit found the good faith exception to the exclusionary rule applied.

The Fourth Circuit takes a contrary view. It holds the good faith doctrine does not apply when a warrant affidavit relies on an officer’s assertion of information from a third party, when the affiant includes no significant detail as to the informant’s basis of knowledge, or corroboration of the informant’s reliability. As the Fourth Circuit explained in *United States v. Wilhelm*, 80 F.3d 116, 123 (4th Cir. 1996),

We believe that this is not a case of “objectively reasonable law enforcement activity.” Proctor could not reasonably rely on an unknown, unavailable informant without significant corroboration. Because Proctor presented to the magistrate nothing more than this unreasonable reliance, the Supreme Court’s third exception to Leon applies: the affidavit here did not “provide the magistrate with a substantial basis for determining the existence of probable cause.” While perhaps not undertaken with deliberate bad faith, Proctor’s use of phrases such as “concerned citizen,” “mature” and “truthful demeanor” strike this court as attempts to endue the affidavit with the appearance of genuine substance; this tactic suggests that Proctor herself knew that probable cause was lacking, and thus that reliance on the resulting warrant was not reasonable. In

addition, the state magistrate appears to have acted as a rubber stamp in finding this affidavit sufficient to establish probable cause. Therefore, the search warrant unsupported by probable cause is not saved by the Leon good-faith exception.

This search was unconstitutional because it was based upon a warrant unsupported by probable cause, and the police could not have acted in good faith in relying on that warrant.

*United States v. Wilhelm*, 80 F.3d 116, 123 (4th Cir. 1996).

Similarly, the Sixth Circuit in *United States v. Weaver*, 99 F.3d 1372, 1380–81 (6th Cir. 1996), found an officer could not rely in good faith on a warrant where probable cause was based on information from a third party, and corroborating facts to support the reliability and basis of knowledge of that individual were flimsy:

Viewed objectively, McCullough possessed some information from a previously reliable informant regarding possible criminal activities but 1) possessed no prior personal knowledge of any unlawful activity by this suspect, or at the suspect residence, other than an old conviction on completely unrelated circumstances; 2) possessed no present personal knowledge of any connection between this suspect and marijuana possession or distribution; 3) had not personally seen any marijuana at the suspect residence nor conducted any visual reconnaissance of the property to determine whether marijuana was likely to be present on the property; and 4) possessed only third-party hearsay information about a possible marijuana grow operation on the property. With little firsthand information and no personal observations, McCullough should have realized that he needed to do more independent investigative work to show a fair probability that this suspect was either possessing, distributing, or growing marijuana.

\* \* \* Had the detective made some meaningful “effort to corroborate the informant’s report at issue, ‘an entirely different case’ would have been presented.” *Gates*, 462 U.S. at 242, 103 S.Ct. at 2334 (citing *Aguilar*, 378 U.S. at 109 n. 1, 84 S.Ct. at 1511 n. 1). We believe a reasonably prudent officer would have sought greater corroboration to show probable cause and therefore do not apply the Leon good faith exception on the facts of this case.<sup>7</sup> Accordingly, the items seized at the Weaver residence should be suppressed.

*United States v. Weaver*, 99 F.3d 1372, 1380–81 (6th Cir. 1996).

The Tenth and Ninth Circuits take a similar view. In *United States v. Gonzales*, 399 F.3d 1225, 1229–31 (10th Cir. 2005), the officer was diligent in showing his search warrant affidavit to his supervisor and the prosecutor for review, before submitting it to a judge. Still, the Tenth

Circuit found the absence of specific facts in the affidavit linking the defendant to the place to be searched, or explaining why evidence might be located there, precluded application of the good faith doctrine. The opinion also discusses Ninth Circuit case law, which holds the same view:

Here, Detective Gonzales's affidavit listed the address of the place to be searched in the caption and described the residence with particularity; however, there were no facts explaining how the address was linked to Mr. Gonzales, the vehicle, or the suspected criminal activity, or why the officer thought the items to be seized would be located at the residence. \* \* \* in *United States v. Hove*, 848 F.2d 137 (9th Cir.1988), the Ninth Circuit held that good faith reliance was lacking where the supporting affidavit failed to provide any connection between the residence subject to search and the suspect or suspected criminal activity. In *Hove*, officers suspected a woman of sending bomb threats to her ex-husband and sought a warrant to search the place in which they believed she was living. *Id.* at 138–39. However, none of the facts supporting the officers' belief that the woman lived at the address to be searched were included in the affidavit. In rejecting the government's good faith argument, the court stated, “the affidavit offer[ed] no hint as to why the police wanted to search this residence. The affidavit ... [did] not offer an explanation of why the police believed they may find incriminating evidence there; the affidavit simply list [ed] the ... address as the location to be searched.” *Id.* at 139–40. \* \* \* Like *Hove*, the affidavit in this case completely failed to explain why the detective believed the items sought would be found at 321 E. Church. And even though we have previously held that courts may properly rely on an officer's experience in finding probable cause, \* \* \* here, the detective's generically stated experience—that “firearm [sic] are often kept at the residence”—was not supported by any facts establishing the residence belonged to or was otherwise linked to Mr. Gonzales. \* \* \* For good faith to exist, there must be some factual basis connecting the place to be searched to the defendant or suspected criminal activity. When this connection is wholly absent, the affidavit and resulting warrant are “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” *Leon*, 468 U.S. at 923, 104 S.Ct. 3405. Exclusion is appropriate in such circumstances because “reasonably well-trained” officers, exercising their own professional judgment, will be able to recognize the deficiency. Here, the warrant was “so lacking,” and the officer's reliance upon it was not objectively reasonable.

*United States v. Gonzales*, 399 F.3d 1225, 1229–31 (10th Cir. 2005) (citation omitted).

The Seventh Circuit's view is directly contrary to that of these other circuits, and warrants this Court's attention to establish a consistent standard for application of the good faith doctrine.

II. This Court should grant the Writ and reverse the Seventh Circuit's holding that a court, when evaluating whether a warrant is so lacking in probable cause to preclude good faith reliance on it, may consider that the officer consulted with the prosecutor's office in preparing the warrant affidavit, and rely on that fact in finding an indicia of probable cause existed.

A. *Leon*'s good faith exception is rooted in the fact that generally no purpose is served by punishing a police officer who reasonably relies on a warrant that a judge appears to have properly issued. As stated in *Leon*,

Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty." *Stone v. Powell*, 428 U.S., at 539–540, 96 S.Ct., at 3073–3074 (WHITE, J., dissenting). This is particularly true, we believe, when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope. In most such cases, there is no police illegality and thus nothing to deter. It is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant comporting in form with the requirements of the Fourth Amendment. In the ordinary case, an officer cannot be expected to question the magistrate's probable-cause determination or his judgment that the form of the warrant is technically sufficient.

*Leon*, 468 U.S. at 920–21.

However, *Leon* explicitly limits application of its good faith doctrine, by identifying circumstances in which an officer's reliance on a warrant can never be deemed objectively reasonable, including where the warrant affidavit lacks even an indicia of probable cause, regardless of other indicators of good faith:

Nevertheless, the officer's reliance on the magistrate's probable-cause determination and on the technical sufficiency of the warrant he issues must be objectively reasonable, *cf. Harlow v. Fitzgerald*, 457 U.S. 800, 815–819, 102 S.Ct. 2727, 2737–2739, 73 L.Ed.2d 396 (1982) and it is clear that in some circumstances the officer will have no reasonable grounds for believing that the warrant was properly issued. \* \* \* Nor would an officer manifest objective good faith in relying on a warrant based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable."

*Leon*, 468 U.S. at 922–23.

Hence, *Leon* clearly prohibits application of the good faith doctrine when a warrant affidavit lacks an indicia of probable cause, regardless of the steps an officer takes during an investigation. In Petitioner's case, the only issue on appeal was whether the information in the warrant affidavit presented an indicia of probable cause. Nevertheless, the Seventh Circuit, in determining whether an indicia of probable cause existed, considered, as part of its analysis, the fact that the officer consulted with the prosecutor about the affidavit before submitting it to a judge: "Detective Becherer's objective good faith is further demonstrated by his decision to consult with the State's Attorney before preparing the complaint for a search warrant." *Matthews*, 12 F.4th at 656. The Seventh Circuit conflates the purely academic question of whether a warrant is based on an indicia of probable cause, with the unrelated question of whether the officer demonstrated good faith in the steps he took to obtain the warrant, which is contrary to *Leon*.

B. The Seventh Circuit's opinion encourages police misconduct. Under the Seventh Circuit's misinterpretation of *Leon*, a police officer seeking a warrant based on uncorroborated hearsay from an informant of unknown reliability (or in one of the other circumstances *Leon* excludes from the good faith doctrine), will simply first seek approval from the prosecutor; if the judge then issues the warrant, the prosecutor's prior approval may help to avoid application of the exclusionary rule. Although the magistrate has the primary responsibility of ensuring a warrant is based on probable cause, *Leon*'s decision not to apply the doctrine when an officer turns a blind eye to a patently deficient warrant, recognizes the officer bears some responsibility in preventing Fourth Amendment violations when a warrant is blatantly deficient. The Seventh Circuit's misconstruction of *Leon* relieves police of this responsibility and seriously weakens this safeguard.

III. Correction of the Seventh Circuit's holding is important, and warrants this Court's attention.

A. The Seventh Circuit's holding is wrong. This Court's clear case law prohibiting a finding of probable cause based on wholly conclusory beliefs, unsupported by articulable facts, and based on facts provided by third parties, without additional information providing some assurance as to the veracity of those facts, is longstanding. As explained in *Illinois v. Gates*,

Our earlier cases illustrate the limits beyond which a magistrate may not venture in issuing a warrant. A sworn statement of an affiant that "he has cause to suspect and does believe that" liquor illegally brought into the United States is located on certain premises will not do. *Nathanson v. United States*, 290 U.S. 41, 54 S.Ct. 11, 78 L.Ed. 159 (1933). An affidavit must provide the magistrate with a substantial basis for determining the existence of probable cause, and the wholly conclusory statement at issue in *Nathanson* failed to meet this requirement. An officer's statement that "affiants have received reliable information from a credible person and believe" that heroin is stored in a home, is likewise inadequate. *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964).

\* \* \*

Our decisions applying the totality-of-the-circumstances analysis outlined above have consistently recognized the value of corroboration of details of an informant's tip by independent police work. In *Jones v. United States*, *supra*, 362 U.S., at 269, 80 S.Ct., at 735, we held that an affidavit relying on hearsay "is not to be deemed insufficient on that score, so long as a substantial basis for crediting the hearsay is presented." We went on to say that even in making a warrantless arrest an officer "may rely upon information received through an informant, rather than upon his direct observations, so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge." *Ibid.* Likewise, we recognized the probative value of corroborative efforts of police officials in *Aguilar* —the source of the "two-pronged test"—by observing that if the police had made some effort to corroborate the informant's report at issue, "an entirely different case" would have been presented. *Aguilar*, *supra*, 378 U.S., at 109, n. 1, 84 S.Ct., at 1511, n. 1.

*Illinois v. Gates*, 462 U.S. 213, 239, 241–42 (1983).

In light of this case law, a police officer could not reasonably rely on a search warrant where probable cause was based only on wholly conclusory beliefs and a general reference to the fact that unspecified third parties provided the information that was the basis of those beliefs.

The information asserted as probable cause in Petitioner's case did not simply fail to rise to the level of probable cause, it failed to supply any appreciable basis to support that evidence would be found at the Fin and Feather property. Therefore, the Seventh Circuit erred in applying the good faith doctrine, and in failing to exclude the evidence.

B. The Seventh Circuit's holding encourages Fourth Amendment violations. Relying on the Seventh Circuit's view, police in this Circuit can try to bypass a neutral judge's review of the basis for probable cause, by asserting only the officer's belief, based on unspecified facts from unspecified third parties. When a judge issues the warrant despite these deficiencies, police may freely rely on it without fear evidence will be excluded. Thus, when an officer's information falls short of even an *indicia* of probable cause, he has nothing to lose by submitting the warrant application anyway.

The Seventh Circuit's holding that the fact that an officer seeks a prosecutor's review is relevant to a good faith determination, despite blatant deficiencies in a warrant, similarly encourages police misconduct. Police who have insufficient information to support even an *indicia* of probable cause may simply consult with the prosecutor before submitting the warrant application to a judge, in order to ensure application of the good faith doctrine, in the event the warrant is issued despite the deficiencies.

## CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Dated: November 18, 2021

Respectfully submitted,

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