

No. _____

In the
Supreme Court of the United States

DELTON EUGENE WARREN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether search warrants must be signed by the issuing judicial officer, or whether the First, Fourth, and Tenth Circuits' literalist interpretation of the Fourth Amendment abrogates both this Court's decision in *Starr v. United States* and the original public meaning of the Fourth Amendment's warrant clause.

PARTIES TO THE PROCEEDING

Petitioner, defendant-appellant below, is Delton Eugene Warren.

Respondent is the United States of America, appellee below.

RELATED PROCEEDINGS

United States v. Warren, 2022 WL 72723 (4th Cir. Jan. 7, 2022) (No. 20-4076) (ECF No. 34), denial of the Petition for Rehearing *En Banc* (4th Cir. Feb. 4, 2022) (ECF No. 50).

United States v. Warren (E.D.N.C. Jan. 21, 2020) (No. 7:17-cr-121-FL) (ECF No. 97).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The decision of the Fourth Circuit is not reported, but is available at 2022 WL 72723 (4th Cir. Jan. 7, 2022) (No. 20-4076) (ECF No. 34), and reprinted in Appendices A and B to the Petition. The Order of the Fourth Circuit denying the Petition for Rehearing *En Banc* is not reported, but is available at ECF No. 50 of Case No. 20-4076 and reprinted in Appendix C to the Petition.

JURISDICTION

The decision of the court of appeals denying rehearing *en banc* was issued on February 4, 2022. App. C. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides, in relevant part, that “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.” U.S. Const. Amend. IV.

INTRODUCTION

In the name of rigid textualism, the First, Tenth, and now Fourth Circuits have ignored this Court’s controlling decision in *Starr v. United States*, 153 U.S. 614, 618 (1894), and wholly detached the Fourth Amendment’s warrant clause from its original public meaning, as shown by the uniform common-law understanding that warrants must be signed by the issuing judicial officer.

In 1894, this Court analyzed the state of the common law at the time of the Fourth Amendment’s drafting and ratification. This Court held that the common law established the original meaning of the Fourth Amendment’s warrant clause, and that the common law was clear: warrants must be signed, though need not be under seal. *See* 153 U.S. at 618–19 (citing BLACKSTONE, HALE, HAWKINS, COKE, DALTON, and CHITTY).

In direct conflict with both this Court’s *Starr* decision and the conclusive common law authorities discussed therein, an expanding list of circuit courts are rejecting the Fourth Amendment’s original public meaning. They do so by employing a hyper-textualist approach that concludes upon observing that the amendment’s text does not state that warrant must be signed. U.S. Const. Amend. IV. The Fourth Amendment, however, was not drafted in a vacuum, and the common law’s long-established constraints on the Crown and Government were incorporated into the Fourth Amendment by its drafters and ratifiers. Those unwritten constraints—including the judicial signature requirement—remain as checks on the Government’s power, as this Court detailed in *Starr*. This Court’s analysis in *Starr v. United States*

was correct and remains controlling precedent. The decisions of the First, Fourth, and Tenth Circuits conflict with this Court’s *Starr* decisions regarding this important question of federal constitutional law, and accordingly, this Court’s review is now necessary.

PROCEEDINGS BELOW

In April 2017, a detective sought a search warrant to enter and search Petitioner Delton E. Warren’s home in Fayetteville, North Carolina. The detective specifically sought a North Carolina search warrant from a North Carolina judge, pursuant to North Carolina’s criminal procedures, using North Carolina’s mandatory forms, for evidence of violations of North Carolina’s narcotics laws. The judge signed the “warrant application” and signed each page of the detective’s probable cause affidavit. The judge, however, did not sign the warrant, though state law required the judge to physically sign the warrant (form AOC-CR-119, side one). N.C.G.A. § 15A-246.

At no point did the detective review the proposed warrant to see if the judge had signed it. If the detective had done so—no matter how briefly—he would have immediately detected from the face of the document that he possessed an unsigned warrant that was invalid under state law.

A copy of the unsigned warrant is reproduced below and in Appendix D to the Petition (emphasis added).

File No.	STATE OF NORTH CAROLINA		
SEARCH WARRANT		Cumberland County	
IN THE MATTER OF 7602 medway Ct, Fay, NC		In The General Court Of Justice District/Superior Court Division	
<p>Date Issued 04/26/2017 Time Issued 2:40 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM</p> <p>Name Of Applicant Detective B.Thompkins</p> <p>Name Of Additional Affiant</p> <p>Name Of Additional Affiant</p>		<p>To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:</p> <p>I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.</p> <p>You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.</p> <p>You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.</p> <p>This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.</p>	
<p><input type="checkbox"/> I made a search of _____ _____ _____ _____ as commanded.</p> <p><input type="checkbox"/> I seized the items listed on the attached inventory. <input type="checkbox"/> I did not seize any items. <input type="checkbox"/> This Warrant WAS NOT executed within forty-eight (48) hours of the date and time of issuance and I hereby return it not executed.</p>		<p>Date _____ Name (type or print) _____ Signature _____</p> <p><input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> CSC <input type="checkbox"/> Magistrate <input type="checkbox"/> District Ct. Judge <input type="checkbox"/> Superior Ct. Judge</p> <p>NOTE: When issuing a search warrant, the issuing official must retain a copy of the warrant and warrant application and must promptly file them with the clerk. G.S. 15A-245(b).</p> <p>This Search Warrant was delivered to me on the date and at the time shown below when the Office of the Clerk of Superior Court is closed for the transaction of business. By signing below, I certify that I will deliver this Search Warrant to the Office of the Clerk of Superior Court as soon as possible on the Clerk's next business day.</p> <p>Name Of Officer Making Return (type or print) _____ Date _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM Name Of Magistrate (type or print) _____ Signature Of Magistrate _____</p> <p>Signature Of Officer Making Return _____ This Search Warrant was returned to the undersigned clerk on the date and time shown below.</p> <p>Department Or Agency Of Officer _____ Incident Number _____ Date _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM Name Of Clerk (type or print) _____ Signature Of Clerk _____</p> <p><small>Original - File Copy - For Search of a Person, to Person from Whom Items Taken Copy - For Search of Vehicle/Premises, to Owner or Person in Apparent Control; If No Such Person Present, Leave Copy Affixed Thereon (Over)</small></p>	
<p>AOC-CR-119, Rev. 3/17 © 2017 Administrative Office of the Courts</p> <p>Government Exhibit A 7:17-CR-121-FL</p>			

Without looking at the warrant's face to conform its compliance with state law (requiring a judicial signature), the detective proceeded to search Petitioner's home. There he located and seized narcotics, currency, and a firearm. Petitioner was then charged in federal court with five controlled substance act offenses, possessing a firearm as a convicted felon, and possessing the firearm in furtherance of a drug trafficking crime.

Petitioner moved to suppress the evidence seized from his home, arguing that the unsigned warrant was constitutionally defective. The Government agreed that the judge had not signed the warrant, but argued that it was valid because judicial signatures are not required by the text of the Fourth amendment and because the judge had intended to sign it in any event.

The federal magistrate judge determined that while “North Carolina law required a signature,” the “text of the Fourth Amendment does not require” it, and “a violation of state law is not the same as a violation of the Fourth Amendment.” No 7:17-cr-121-FL (E.D.N.C.) (ECF No. 44 at 5). The magistrate judge thus concluded that the warrant was valid because it was supported by probable cause and the Judge had “intended to issue the warrant.” *Id.* (emphasis added). The district adopted the magistrate judge’s recommendation, holding that the Constitution does not require search warrants to be signed. No. 7:17-cr-121-FL (E.D.N.C.) (ECF No. 46 at 9–10).

After the denial of his suppression motion, Petitioner pled guilty to the controlled substance offenses and stood trial on the firearms offenses. The evidence seized from his home was admitted against Petitioner, and the jury convicted him. At sentencing, the district court imposed a sentence of 78 months’ imprisonment for Counts 1–5 and 7, followed by a consecutive 60 months’ imprisonment for Count 6, for a total of 138 months’ imprisonment. No. 7:17-cr-121-FL (E.D.N.C.) (ECF Nos. 95, 97).

On direct appeal, a panel of the Fourth Circuit noted that “[w]hether the lack of a signature on a warrant renders it constitutionally defective is an issue of first impression for this Court.” Appendix A at 5 (citing the decisions of the First Circuit in *United States v. Lyons*, 740 F.3d 702, 724–25 (1st Cir. 2014) and the Tenth Circuit in *United States v. Cruz*, 774 F.3d 1278, 1286 (10th Cir. 2014), which have both held that the text of the Fourth Amendment does not require warrants to be signed).

The Fourth Circuit did not reference this Court’s decision in *Starr v. United States*, nor confront the centuries of common law jurisprudence detailed in *Starr*. Rather, the court concluded that police can execute unsigned search warrants so long as the “warrant packet” is “mostly signed.” Appendix A at 8 (emphasis added). Applying *United States v. Leon*, 468 U.S. 897 (1984), the court held that the glaring absence of a judicial signature on the face of the warrant was of so little moment that—even if that defect invalidated the warrant—police were excused from having to look at the warrant before entering peoples’ homes and seizing their papers and effects.¹

Petitioner sought rehearing *en banc*, explaining that the panel decision (1) overlooked the centuries of common law jurisprudence (informing the warrant clause’s original meaning), and (2) conflicted with this Court’s decision in *Starr v. United States*—confirming the compelling force of the common law when discerning

¹ The Fourth Circuit also observed that warrant was not facially deficient for its failure to particularize the place to be searched or the things to be seized (though Petitioner never challenged the sufficiency of its particularity). Appendix A at 8.

the original meaning of the Fourth Amendment. (No. 20-4076, ECF No. 47). The Fourth Circuit denied Petitioner’s request for rehearing *en banc* without analysis. Appendix C.

REASONS FOR GRANTING THE PETITION

I. The decisions of the First, Tenth, and now Fourth Circuits conflict with this Court’s decision in *Starr v. United States* and its analysis of the original public meaning of the Fourth Amendment’s warrants clause.

A. *This Court has held that warrants require signatures.*

The Fourth Amendment provides that “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.” U.S. Const. amend. IV. This fundamental protection of individual liberty was not drafted in a vacuum, but against the common law, whose well-established warrant requirements explain the Fourth Amendment’s original meaning, even when those common law constraints are not delineated by the Amendment’s text. Among the common law’s essential safeguards is a requirement that the issuing judicial official sign the warrant. *Starr v. United States*, 153 U.S. 614 (1894).

In *Starr*, this Court specifically analyzed the common law’s warrant requirements, incorporated into the Fourth Amendment by its framers and ratifiers. This Court’s analysis conclusively demonstrated that, under common law, warrants must be signed. This conclusion was a necessary component of its specific holding, that the common law (and thus the Fourth Amendment) did not conclusively require

a judicial seal in addition to the judicial signature. *Starr*, 153 U.S. at 618–19 (unlike judicial signature, “there was no settled rule at common law invalidating warrants not under seal.”).

In support of a uniform understanding that warrants must be signed, this Court noted that every common law commentator agreed that warrants require signature. *Starr*, 153 U.S. at 617–18 (citing 4 WILLIAM BLACKSTONE, COMMENTARIES *287 (“[T]he warrant ought to be under the hand and seal of the justice.”); EDWARD COKE (2 Inst. 590) (The arrest warrant “must be in writing, in the name and under the seal of him that makes the same, expressing his office, place, and authority, by force whereof he maketh the mittimus” (warrant).); MATTHEW HALE, 1 PLEAS OF THE CROWN 577 (1778) (The warrant “must be under seal, though some have thought it sufficient if it be in writing, subscribed by the justice.”); WILLIAM HAWKINS, 2 HAWK, PL. CR. B. 6; MICHAEL DALTON, DALTON C. 117, and JOSEPH CHITTY, 1 J. CHITTY, CRIMINAL LAW 38 (“It is generally laid down, that the warrant ought to be under the hand and the seal of the justice who makes it, but it seems sufficient if it be in writing, and signed by him.”).² This Court has not decoupled the Fourth Amendment’s warrant signature requirement from its common-law moorings, nor has this Court questioned or cabined its decision that valid warrants require judicial signatures.

² This Court has more recently observed that the principal guide in analyzing historical practice is to “look primarily to eminent common-law authorities (Blackstone, Coke, Hale, and the like), as well as to early English and American judicial decisions.” *Kahler v. Kansas*, 140 S. Ct. 1021 (2020).

B. *The Court should grant the Petition to address the growing trend among the Circuits of applying a hypertextual reading of the Fourth Amendment at the expense of its original meaning.*

In addition to the court below, two other circuits openly reject the Fourth Amendment's original meaning through improperly formalistic applications of textualism. The First Circuit in *United States v. Lyons*, 740 F.3d 702, 724-25 (1st Cir. 2014) and the Tenth Circuit in *United States v. Cruz*, 774 F.3d 1278, 1286 (10th Cir. 2014) both begin and end their analysis by observing that "nothing in the [text of the] Fourth Amendment conditions the validity of a warrant on its being signed." *Lyons*, 740 F.3d at 724; *see Cruz*, 774 F.3d at 1278. These courts thus concluded that the constitution was not violated when a judge fails to sign the warrant, so long as the judge subsequently indicates that they meant to sign the warrant.

The signature of judicial officers serves important functions. In addition to demonstrating that the warrant was issued by a neutral, detached, and independent jurist, *see Johnson v. United States*, 333 U.S. 10, 13–14 (1948), judicial signature on the face of the warrant provides assurance to the individual of the detective's lawful right to search their home and seize their property and effects. *See United States v. Chadwick*, 433 U.S. 1, 9 (1977) (abrogated on other grounds); *California v. Acevedo*, 500 U.S. 565 (1991).

The text of the Fourth Amendment does not specifically require a judicial signature, but that cannot end the analysis. After all, the text of the Fourth Amendment does not require warrants to be issued by neutral judicial officers, nor forbid the issuance of warrants *nunc pro tunc*. And while the constitutionality of a police detective issuing a search warrant after searching someone house and seizing their property is hopefully inconceivable, this violates no part of the Fourth Amendment's text. To resolve this important constitutional interpretive friction between textualism and originalism, this Court should grant this Petition.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted, this the 5th day of May, 2022.

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