NO. _____

In the

Supreme Court of the United States

Jamarr Smith, Thomas Iroko Ayodele, Gilbert McThunel, II

Petitioners,

v.

United States of America,

Respondent

On Petition for a Writ of Certiorari
from the United States Court of Appeals
for the Fifth Circuit

Fifth Circuit Case No. 23-60321

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

This case involves a "geofence warrant" that authorized a dragnet search of millions of Google users' Location History data. The Fifth Circuit correctly held that such warrants are categorically unconstitutional, just like the reviled "general warrants" that gave rise to the Fourth Amendment. Still, the court upheld the convictions based upon these warrants under the "good faith" doctrine. (App. 37) (citing *United States v. Leon*, 468 U.S. 897 (1984)).

Application of the good-faith doctrine here undermines fundamental Fourth Amendment protections by eroding the prohibition on general warrants and incentivizing the government's reckless use of digital surveillance technologies before judges have the opportunity to evaluate their constitutionality.

The question presented is:

Whether the good-faith doctrine applies to digital-age general warrants.

PROCEEDINGS BELOW

The United States instituted this criminal action for robbery and conspiracy to commit robbery of a United States mail carrier in the United States District Court for the Northern District of Mississippi on October 27, 2021, styled *United States v. Jamarr Smith, Thomas Iroko Ayodele aka "Roko", and Gilbert McThunel II*, case no. 3:21-CR-107-SA-RP. Relevant to this petition, Smith, Ayodele and McThunel filed a motion to suppress evidence that was decided by the district court on February 10, 2023. That decision is reproduced in the appendix and is reported at 2023 WL 1930747 (N.D. Miss. Feb. 10, 2023). (App. 41-65). The petitioners were found guilty by a jury, sentenced to prison on June 15, 2023, and subsequently appealed to the United States Court of Appeals for the Fifth Circuit. On August 9, 2024, a panel of the Fifth Circuit issued a published opinion in *United States v. Jamarr Smith, Thomas Iroko Ayodele and Gilbert McThunel II*, case no. 23-60321 (App. 1-39) and denied rehearing en banc on January 14, 2025. (App. 40). The decision is reported at 110 F.4th 817 (5th Cir. 2024).

This petition is timely because on March 28, 2025, the Court granted an extension of time to file a petition for a writ of certiorari to and including May 13, 2025. (App. 66).

JURISDICTION

The Fifth Circuit issued its opinion on August 9, 2024, and denied rehearing on January 14, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

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Petitioners Jamarr Smith (hereinafter "Smith"), Thomas Iroko Ayodele (hereinafter "Ayodele"), and Gilbert McThunel, II (hereinafter "McThunel") ask this Court to issue a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

CONSTITUTIONAL PROVISION INVOLVED

Amendment IV to the United States Constitution:

> *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.*

INTRODUCTION

This case presents the pressing question of whether the good-faith exception to the exclusionary rule applies to searches conducted pursuant to unconstitutional, digital-age general warrants. At issue is a "geofence" warrant that permitted the government to search the location data of 592 million Google users in order to identify suspects in a robbery. The Fifth Circuit correctly held that this was an unconstitutional general warrant but applied the good-faith exception nonetheless. (App. 37). The Court should grant review to evaluate the propriety of the good-faith exception in the context of these digital-age general warrants and decline to extend the good-faith doctrine to them in an era of rapidly evolving technology.

STATEMENT OF THE CASE

I. Underlying Incident

On February 5, 2018, a contractor for the United States Postal Service was picking up the mail from the Lake Cormorant, Mississippi post office, when he was assaulted and robbed by an unidentified, masked person. (App. 2). United States Postal Inspection Service investigated the robbery, but despite possessing surveillance video of the incident, were unable to generate any suspects or leads. (App. 3). The case was at a standstill for approximately nine months until investigators decided to try a new-to-them investigative technique, called a "geofence warrant." (App. 4).

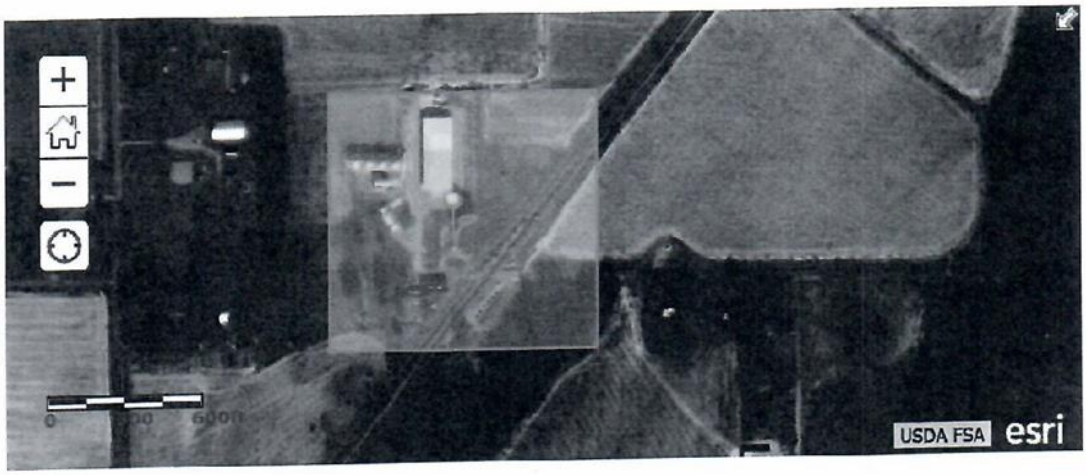
II. The Geofence Warrant

Inspector Todd Matney of the United States Postal Inspection Service sought a search warrant requiring Google to search hundreds of millions of users in an attempt to determine which devices were in the vicinity of the crime. Matney, however, relied on Postal Inspector Stephen Mathews to draft the application. Mathews had never drafted such a warrant and did not know precisely how it worked, but forged ahead. Although this type of warrant was new to Mathews, it was not particularly unique. Instead, it was one of the 982 geofence warrant requests to Google in 2018, the first year that these statistics were recorded. In 2020, Google received 11,554 geofence warrants. *United States v. Davis*, 109 F.4th 1320, 1335 (11th Cir. 2024) (Jordan, J., concurring). Mathews used templates or "go bys" provided by other law enforcement agents, and simply plugged in the details for this case. He also consulted with the United States Attorney's office. (App. 12-13).

The warrant affidavit stated that "there is probable cause to believe that certain unknown Google accounts" contained relevant location information. (App. 13). Google collects location data from devices that have "Location History" enabled, a Google service that creates a "private map" depicting everywhere the device has been. *United States v. Chatrie*, 590 F. Supp. 3d 901, 912 (E.D. Va. 2022). As of 2018, Google reported that approximately one-third of its users had Location History enabled, which totals approximately 592 million accounts. (App. 7).

The attachment to the warrant application identified no specific Google accounts of any specific individual; instead, it identified only a geographical box (*i.e.*, a geofence) of coordinates around the Lake Cormorant Post Office.

The highlighted area in the below map is the area represented by the coordinates listed above and the location pinned in the middle of the highlighted area is the location of the Lake Cormorant Post Office.



This box covered approximately 98,192 square meters, which is roughly the size of 18 football fields. (App. 13).

The warrant established a three-step process that required Google to collaborate with the government to determine what information to produce. In Step 1, Google searched all 592 million accounts to produce an "anonymized" list of devices that appeared within the "geofence." (App. 10, 15-16). Although the warrant application and affidavit explicitly stated that, after Google provided the anonymized data in response to Step 1, the government would "seek additional

information as to those devices through further legal process," (App. 13) they did not do so.

Instead, the government proceeded directly to step 2. It analyzed records produced in Step 1 and demanded that Google "provide additional location history" for an additional 60 minutes before and after the initial time period in Step 1. (App. 16) The government requested and received these additional records, all without judicial oversight.

In Step 3, "upon demand" by the government and not through issuance of an additional warrant, Google produced "de-anonymized" information that identified users by their subscriber information. Once again, Step 3 was executed contrary to the averments in the Matney affidavit that the government would undertake "further legal process" to obtain this data. Instead, the government, again without judicial oversight, selected which accounts it wanted to de-identify and investigate further. (App. 16-17).

Based upon the results provided by Google, the government identified McThunel and Smith as suspects, and later, through other investigative techniques derived from the Google information, the government identified Ayodele as a suspect due to his connection with Smith on Facebook. (App. 17).

III. Constitutionality of the Geofence Warrant

After they were indicted, Smith, Ayodele and McThunel filed a motion to suppress evidence derived from the geofence warrant in the district court. The district court denied the motion, finding that it did not need to resolve any issues

concerning the constitutionality of the warrant because the good-faith exception applied. (App. 64-65) (citing *United States v. Leon*, 468 U.S. 897, 913 (1984)). The petitioners were later convicted of the underlying offense.

On appeal, the Fifth Circuit panel did not sidestep the constitutional question, finding that (1) people have a reasonable expectation of privacy in their location information, (App. 21-30); and (2) "[g]eofence warrants present the exact sort of 'general, exploratory rummaging' that the Fourth Amendment was designed to prevent" and are "categorically prohibited." (App. 32).

However, the Fifth Circuit affirmed the district court's finding on good faith and ruled that suppression motion should be denied. (App. 34-37). The court reasoned that because the officers used "cutting edge investigative techniques",[1] consulted with the United States Attorney's Office, and exhibited no malicious intent, there was no wrongful conduct to deter. The Fifth Circuit also relied on the lack of contrary legal precedent in 2018. (App. 36-37). The Fifth Circuit's finding on good-faith did not take into account the egregious unconstitutionality of the geofence warrants, which it acknowledged constitute "general warrants." The Fifth Circuit therefore upheld the petitioners' convictions.

[1] Citing *United States v. McLamb*, 880 F.3d 685 (4th Cir. 2018).

REASONS FOR GRANTING THE WRIT

I. This Case Presents an Important and Recurring Question Regarding the Applicability of the Good-Faith Doctrine in the Context of Digital-Age General Warrants.

Pursuant to Sup. Ct. R 10(c), the Fifth Circuit has decided this important question of federal law, which has not been, but should be settled by this Court: whether the good faith exception to the exclusionary rule applies to digital-age general warrants like the geofence warrant in this case. Petitioners urge the Court to review this matter and resolve this recurring question that has profound implications for privacy rights in this era of rapidly evolving technologies.

Though the Fifth Circuit has ruled in this case that geofence warrants are unconstitutional, and law enforcement officers in Mississippi, Louisiana, and Texas cannot rely on good faith in seeking them, there are other geofence warrants that were obtained in other circuits, and even in the Fifth Circuit prior to the decision in the this case. Their validity remains an issue. More importantly, as technology advances, other forms of warrants allowing digital exploratory rummaging will be sought by law enforcement officers throughout that nation, and the issue of whether officers can rely on them in good faith should be resolved at the earliest opportunity.

A. There Can Be No Good Faith in General Warrants.

This Court established the good-faith exception to the exclusionary rule in 1984, almost two centuries after the Fourth Amendment was ratified and at least two decades before the boom in surveillance policing technologies transformed the

law enforcement landscape.[2] *Leon*, 468 U.S. 897. Such a recent rule must not be read to erode the absolute prohibition on general warrants that inspired not only the drafting of the Fourth Amendment, but in many ways the founding of this country. *See Riley v. California*, 573 U.S. 373, 403 (2014). And yet, that is exactly what the good-faith exception threatens to do in this case.

"General warrants" are warrants that "specif[y] only an offense," leaving "to the discretion of the executing officials the decision as to which persons should be arrested and which places should be searched." (App. 31) (quoting *Steagald v. United States*, 451 U.S. 204, 220 (1981)). As the Fifth Circuit noted, "it would be a needless exercise in pedantry to review again the detailed history of the use of general warrants as instruments of oppression from the time of the Tudors, through the Star Chamber, the Long Parliament, the Restoration, and beyond." *Id.* (quoting *Stanford v. Texas*, 379 U.S. 476, 482 (1965)). But geofence warrants authorize exactly the sort of "general, exploratory rummaging" the Fourth Amendment was designed to guard against and therefore constitute general warrants. *Id.*; *see also Riley*, 573 U.S. at 403.

There can be no such thing as relying on a general warrant in good faith. *See Groh v. Ramirez*, 540 U.S. 551, 558 (2004) (finding that a warrant "so obviously

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[2] This boom in surveillance policing transformed not just the way that police conduct criminal investigations, but also their dominion over the surveillance technologies they use. *See* Barry Friedman, et al, *Policing Police Tech: A Soft Law Solution*, 37 Berkeley Tech. L.J. 705 (2022); Elizabeth Joh, *The Undue Influence of Surveillance Technology Companies on Policing*, 92 N.Y.U. L. Rev. Online 19 (2017), available at https://nyulawreview.org/wp-content/uploads/2017/08/NYULawReviewOnline-92-Joh_0.pdf.

deficient" in particularity must be regarded as "warrantless" within the meaning of our case law). To hold otherwise would invite the kind of "systematic error" and "reckless disregard of constitutional requirements" that this Court has cautioned against. *Herring v. United States*, 555 U.S. 135, 144 (2009); *see also United States v. Krueger*, 809 F.3d 1109, 1123 (10th Cir. 2015) (Gorsuch, J., concurring) (finding that when a warrant is void, "potential questions of 'harmlessness'" do not matter); *United States v. Winn*¸ 79 F. Supp. 3d 904, 926 (S.D. Ill. 2015) ("Because the warrant is a general warrant, it has no valid portions.").

In the years since *Leon*, some lower courts have endorsed this principle, finding the good-faith exception inapplicable to general warrants. *See, e.g., United States v. Ninety-Two Thousand Four Hundred Twenty-Two Dollars and Fifty-Seven Cents ($92,422.57)*, 307 F.3d 137, 149 (3d Cir. 2002) (finding general warrants to be "so plainly in violation of the particularity requirement that the executing officers could not have reasonably trusted in its legality"); *United States v. George*, 975 F.2d 72, 77-78 (2d Cir. 1992); *United States v. Medlin*, 842 F.2d 1194, 1199 (10th Cir. 1988); *United States v. Crozier*, 777 F.2d 1376, 1381 (9th Cir. 1985); *see also United States v. Minnick*, 2016 WL 3461190, at *5 (D. Md. June 21, 2016) (considering the good-faith exception's applicability to suppression after rejecting the claim that what issued was a general warrant); *Winn*, 79 F. Supp. 3d at 926; *United States v. Fleet Mgmt. Ltd.*, 521 F. Supp. 2d 436, 445-46 (E.D. Pa. 2007) ("[W]e read Third Circuit precedent to prohibit the use of the good-faith exception in connection with general warrants.") (citing *United States v. Christine*, 687 F.2d 749, 758 (3d Cir.

1982) ("It is beyond doubt that all evidence seized pursuant to a general warrant must be suppressed.")).

And recently, in *United States v. Holcomb*, the Ninth Circuit held that a warrant provision authorizing the unrestricted search of a digital device was so overbroad and "insufficiently particular" as to constitute a general warrant. 132 F.4th 1118, 1135 (9th Cir. 2025). The court properly concluded that "an officer who relies on any such provision while executing a search warrant does not act in good faith." *Id.*; *see also United States v. Griffith*, 867 F.3d 1265, 1279 (D.C. Cir. 2017) (holding that unconstitutionally overbroad and unparticularized digital device search warrant did not qualify for good-faith exception).

B. This Issue Has Sufficiently Percolated and Lower Courts Need This Court's Guidance.

In the geofence context, district courts have differed on whether the good-faith exception applies to such plainly unconstitutional warrants. In *United States v. Fuentes*, the Eastern District of Oklahoma held that a the good-faith exception did not apply. *United States v. Fuentes*, 2024 WL 5494054, at *11 (E.D. Okla. Sept. 3, 2024), *report and recommendation adopted*, 2025 WL 484628 (E.D. Okla. Feb. 13, 2025), *reconsideration denied*, 2025 WL 1042177 (E.D. Okla. Apr. 8, 2025). The court determined that, as in this case, the investigator had "very little" actual knowledge about geofences, that he had used a warrant template written by someone else, and that his attestations regarding "his training and experience" were "simply false." *Id.* In fact, as here, the investigator had received no formal training on geofence warrants and based his statements on conversations he had

with other law enforcement. *Id.* at *4. The court concluded that "[n]o facts were presented on the face of the Affidavit to remove the Search Warrant from the ominous shadow of a general warrant," and that suppression of evidence obtained pursuant to the geofence warrants is mandated. *Id.* at *11.

In *United States v. Chatrie*, the Eastern District of Virginia also found a geofence warrant unconstitutional because it lacked "particularized probable cause" and granted the government "unbridled discretion" over what to search and seize. *Chatrie*, 590 F. Supp. 3d at 927. But by contrast, the court applied the good-faith exception, reasoning that there was "lack of judicial guidance on this novel investigative technique." *Id. at* 936. On appeal, the Fourth Circuit affirmed *en banc* only the district court's "judgment" denying suppression in a one-sentence *per curiam* decision. *United States v. Chatrie*, 2025 WL 1242063 at *1 (4th Cir. Apr. 30, 2025). The court issued eight concurrences and one dissent, comprising 126 pages, without clear guidance on how to proceed. The chief judge acknowledged that the court's decision failed to provide judicial guidance despite many years of litigation. *Id.* at *8 (Diaz, C.J., concurring) ("we've gifted law enforcement (and the public) a labyrinth of—by my count, nine—advisory opinions, many pointing in different directions"); *see also id.* at *48 (Berner, J., concurring) ("Deciding this case without reaching the Fourth Amendment issues merely perpetuates the constitutional fog that will allow unlawful searches of Location History data to continue to evade consequence through the good-faith exception.").

Here, the Fifth Circuit likewise erred in applying the good-faith exception, again resting on the "novelty of the technique and the dearth of court precedent to follow." (App. 37). But there is nothing 'novel' about requiring that investigators demonstrate probable cause and particularity, even—and perhaps especially—if they seek to use new forms of digital surveillance that they do not fully comprehend. "[A]n officer need not know the judiciary's view on the use of new technology with the Fourth Amendment to know that the information in the warrant was insufficient." *Chatrie*, 2025 WL 1242063 at *51 (Gregory, J., dissenting). Thus, "whatever the alleged uncertainty regarding geofence warrants, it [is] not unclear what the Constitution demands of all warrants." *Id.*

C. This Geofence Warrant Is Part of a Nationwide Trend That Should Be Deterred

This warrant was not an isolated instance of investigators trying something new, but rather part of an exponential, nationwide trend. In fact, the government has been obtaining geofence warrants since 2016, nearly a decade.[3] Google then "observed over a 1,500% increase in the number of geofence requests it received in 2018 compared to 2017; and the rate ... increased over 500% from 2018 to 2019." *Chatrie*, 590 F. Supp. 3d at 914. And in 2019—the year the public became aware of geofence warrants[4]—Google received "around 9,000 total geofence requests." *Id.* As of 2021, Google reported that "geofence warrants comprise more than twenty-five

[3] *Geofence Warrants and the Fourth Amendment*, 134 Harv. L. Rev. 2508, 2510 (2021).

[4] *See* Jennifer Valentino-DeVries, "Tracking Phones, Google Is a Dragnet for the Police," N.Y. Times (Apr. 13, 2019), https://www.nytimes.com/interactive/2019/04/13/us/google-location-tracking-police.html.

percent of all warrants it receives in the United States." *Id.* The exclusionary rule can and should deter such "recurring or systemic negligence." *Herring,* 555 U.S. at 144. Given the "flagrancy" of the misconduct here—a pattern of digital general warrants—this Court should send a message to law enforcement that the Fourth Amendment will not excuse such violations. *Id.* at 143. The government's conduct in this case is culpable enough to yield "meaningful[l]" deterrence that would be "worth the price paid by the justice system." *Id.* This is not "objectively reasonable law enforcement activity." *Leon*, 468 U.S. 919. To the contrary, it is the most unreasonable and dangerous kind of law enforcement activity imagined by the drafters of the Fourth Amendment: widespread, sanctioned execution of general warrants. The Court should deter similar conduct by applying the exclusionary rule.

It is axiomatic that warrants require probable cause and particularity. Every law enforcement officer is trained to follow these constitutional requirements for obtaining a valid warrant. Both investigators Matney and Mathews were veteran officers with experience obtaining countless warrants and testified at length about their familiarity with these concepts. Regardless of their experience, officers should not be allowed to mask constitutional shortcomings with the mere novelty of an investigative technique that was well-known to the government.

D. The Good-Faith Exception is Ill-Suited to the Rapid Evolution of Policing Technologies and the Rise of Digital-Age General Warrants.

The good-faith doctrine is ill-suited to the digital age. The rapid evolution of technology means that law enforcement will always have new digital surveillance

tools at their disposal long before courts have an opportunity to hear a motion to suppress or review the constitutionality of the search in an adversarial setting. And if courts continue to apply the good-faith doctrine time and time again, even in the face of modern-day general warrants, then the exclusionary rule becomes an empty threat. Applying the good-faith doctrine to such digital dragnets renders the Fourth Amendment protections "a nullity in the face of rapidly emerging technology." *Chatrie*, 2025 WL 1242063, at *51 (Gregory, J., dissenting).

In this sense, the good-faith doctrine is like other rules that the Court has revisited in the face of changing technology. *See, e.g., Riley*, 573 U.S. at 393 (observing that likening a physical search to the search of a cell phone is akin to "saying a ride on horseback is materially indistinguishable from a flight to the moon"); *United States v. Jones*, 565 U.S 400, 417 (2012) (Sotomayor, J., concurring) (describing the third-party doctrine as "ill-suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks"); *accord Carpenter v. United States*, 585 U.S. 296, 310-11 (2018). In each instance, this Court considered and rejected the straightforward application of old rules intended for physical searches to digital technologies like GPS trackers, device searches, and cell site location information. The same dynamic is at work here, and it is likewise error to "mechanically" apply the good-faith doctrine to such sweeping searches as geofence warrants. *Carpenter*, 585 U.S. at 314.

The good-faith exception to the exclusionary rule instructs that "evidence obtained in violation of the Fourth Amendment by officers acting in objectively reasonable reliance on a search warrant . . . need not be excluded." *Leon*, 468 U.S. at 927. The Court formulated this exception at a time when police still relied on old-fashioned physical searches. And in 1984, the specter of geofence warrants and digital dragnets surely did not occur to the Justices. But as new surveillance technologies proliferate at a dizzying rate, delivering police direct access to massive databases of personal information, it is no longer reasonable to mechanically apply the good-faith exception to each new surveillance tool that tempts law enforcement. Nor is it correct to assume that exclusionary rule would have no "significant deterrent effect" on police officers or magistrate judges in such circumstances. *Id.* at 916–19.

Policing technologies have become not only increasingly complex and opaque, but also more entangled with private companies like Google.[5] Law enforcement agencies devote massive portions of their budgets to purchasing and licensing novel policing technologies from private companies.[6] By contrast, magistrate judges may no longer be equipped to evaluate, merely by reading a warrant affidavit, what the true scope of a search entails.[7] They simply do not possess the time, resources, and expertise necessary to determine the nature of each new digital intrusion they are

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[5] *See* Maneka Sinha, *The Automated Fourth Amendment*, 73 Emory L.J. 589 (2024).

[6] Joh, *supra* n.3.

[7] *See* J. James Orenstein, "I'm a Judge. Here's How Surveillance Is Challenging Our Legal System.", N.Y. Times (June 13, 2019), https://www.nytimes.com/2019/06/13/opinion/privacy-law-enforcment-congress.html.

asked to authorize. This is especially true where, as here, the government does not disclose that the search will affect the privacy rights of hundreds of millions of people.

Here, the entire concept of a geofence warrant, from Steps 1 to 3, was developed by Google in conjunction with the Computer Crime and Intellectual Property Section ("CCIPS") of the Department of Justice. *Chatrie*, 590 F. Supp. 3d at 914. The DOJ knew full well what it was doing – creating a digital dragnet that searched millions of users' accounts without probable cause to search any one of them. Moreover, this collaboration with CCIPS seemingly generated the templates or "go-bys" that Inspectors Matney and Mathews eventually used in this case. *See id.*; *Smith*, (App. 13). In other words, Inspectors Matney and Mathews did not cook all this up on their own; they had a recipe.

It therefore rings hollow to excuse the government's conduct on the grounds that the tool it used was "novel." And it further challenges the validating effect of police consultation with the U.S. Attorney, when this consultation apparently produced a patently unconstitutional warrant. There is no doubt that officers may benefit from discussing warrant applications with prosecutors, but such consultation cannot shield an investigator who unreasonably relies on an unconstitutional warrant. *See, e.g.*, *United States v. Lyles*, 910 F.3d 787, 796 (4th Cir. 2018) (finding that while prosecutors and police supervisor's review of warrant application is relevant to good faith analysis, because those parties share the officer's incentives to ferret out crime, such review is not dispositive); *see also*

Messerschmidt v. Millender, 565 U.S. 535, 554 (2012) ("And because the officers' superior and the deputy district attorney are part of the prosecution team, their review also cannot be regarded as dispositive."). Otherwise, "police departments might be tempted to immunize warrants through perfunctory superior review, thereby displacing the need for 'a neutral and detached magistrate' to make an independent assessment of an affidavit's probable cause . . . ." *Lyles*, 910 F.3d at 796-97 (citing *Riley*, 573 U.S. at 382 (emphasizing constitutional importance of warrant review by neutral and detached magistrate)).

In an age of rapidly evolving technology, it is not acceptable to "cry 'novelty' and 'technological change' as an excuse for a fundamental departure from our constitutional principles." *Chatrie*, 2025 WL 1242063, at *52 (Gregory, J., dissenting). Technology will continue to evolve, but the Fourth Amendment must not bend. *See id*. *Jones*, *Riley*, and *Carpenter* all fortified the Fourth Amendment in the digital age by extending the warrant requirement to the use of novel surveillance technologies. Here, the Court should decline to extend the good-faith doctrine in the context of digital-age general warrants to ensure that the Fourth Amendment continues to "secure 'the privacies of life' against 'arbitrary power.'" *Carpenter*, 585 U.S. at 305 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). "Regrettably, the ever-increasing extension of the good faith exception to the exclusionary rule has turned this sacred principle of Fourth Amendment interpretation on its head." *Chatrie*, 2025 WL 1242063, at *52 (Gregory, J., dissenting).

The exclusionary rule should guard against the execution of sweeping, general warrants like geofences. *Mapp v. Ohio*, 367 U.S. 643, 657 (1961). But as applications of the good-faith exception have increased, the potency of the exclusionary rule has diminished.[8] Indeed, in the wake of the *Carpenter* decision, a "remarkably high proportion of cases were resolved under the good faith exception."[9] This overreliance on the good-faith exception warrants examination by this Court. Absent intervention, police will continue to seek unconstitutional, general warrants involving novel and untested surveillance technologies and judges will continue to grant them.

II. This Case Presents a Suitable Vehicle for Resolving the Question Presented.

This case presents an ideal vehicle for deciding this issue. There is a well-developed record. Petitioners timely objected below and fully briefed this issue to the Fifth Circuit Court of Appeals, specifically urging the court of appeals to find that the good faith doctrine should not apply. The Fifth Circuit squarely decided the question, issuing a lengthy, published decision, and denied rehearing *en banc*. (App. 1-40).

The question presented by this case arises with increasing frequency. Indeed, police have submitted virtually identical applications for geofence warrants across the country, in investigations ranging from a hospital employee's stolen wallet to a

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[8] *See* Matthew Tokson and Michael Gentithes, *The Reality of the Good Faith Exception*, 113 Geo. L.J. 551, (2025) (describing the increase in discussion and application of the good-faith exception and incentives that motivate the use of the good-faith exception).

[9] Tokson, *supra,* at 574.

string of neighborhood vehicle burglaries to arson.[10] If every court confronted with this "novel" technology were to apply the good-faith doctrine, the government would have a free pass to violate the Fourth Amendment.

Such an outcome would also incentivize individual officers to adopt similar technologies without understanding how they work or adequately informing the courts about the tools' reliability or the privacy risks at stake. "[P]olice officers might shift the focus of their inquiry from 'what does the fourth amendment require?' to 'what will the courts allow me to get away with?'" Potter Stewart, *The Road to* Mapp v. Ohio *and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 Colum. L. Rev. 1365, 1403 (1983). Indeed, as policing technology continues to evolve rapidly, this process is doomed to repeat with each new incarnation of digital surveillance, effectively suffocating the exclusionary rule with the good-faith doctrine.

This case thus presents the Court with an opportunity to provide guidance to lower court judges on an important and recurrent legal and constitutional question: whether the good-faith exception to the exclusionary rule applies to digital-age general warrants like the geofence in this case.

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[10] *See, e.g.*, Affidavit for Search Warrant No. 2344001 (Utah 2d Dist. Ct. Nov. 8, 2021); Affidavit for Search Warrant No. 2351121 (Utah 2d Dist. Ct. Nov. 22, 2021); Affidavit for Search Warrant, In re Accounts Associated with Devices that Were Inside the Area (Wake Cty. N.C. Super. Ct. May 5, 2017), available at https://www.documentcloud.org/documents/4388574-20170505-arson-warrant. html.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully Submitted,

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