No.

In the Supreme Court of the United States

PAUL S. OSTERMAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

There is a presumption of validity with respect to the affidavit supporting a search warrant. In *Franks v. Delaware*, 438 U.S. 154 (1978), this Court recognized that a defendant may overcome this presumption of validity "when the defendant shows by a preponderance of the evidence that (1) the affidavit in support of the warrant contains false statements or misleading omissions, (2) the false statements or omissions were made deliberately or with reckless disregard for the truth, and (3) probable cause would not have existed without the false statements and/or omissions." *United States v. Williams*, 718 F.3d 644, 647-48 (7th Cir. 2013) (citing *Franks*, 438 U.S. at 155-56). In evaluating whether probable cause would have existed without the false statements and/or omissions, the court "eliminate[s] the alleged false statements," *Betker v. Gomez*, 692 F.3d 854, 860 (7th Cir. 2012), and adds in the evidence that had been omitted, *Rainsberger v. Benner*, 913 F.3d 640, 643 (7th Cir. 2019). The court then determines whether the resulting "hypothetical affidavit" or "corrected affidavit" sets forth probable cause. *Id.*

But there is a circuit split on whether the "hypothetical affidavit" should be supplemented with only the allegedly omitted exculpatory facts or, instead, should be supplemented with allegedly omitted exculpatory facts and any additional inculpatory facts or context that the affiant was aware of but did not include in the original affidavit.

1. In the context of a *Franks* challenge, when evaluating whether an alleged omission was necessary to a finding of probable cause, may a

court supplement the "hypothetical affidavit" or "corrected affidavit" with evidence beyond the alleged exculpatory omissions?

2. Does an officer show a reckless disregard for the truth by swearing to facts in the warrant affidavit that are contradicted by records within the officer's possession at the time the affidavit is sworn out?

PARTIES TO THE PROCEEDING

Other than the present Petitioner and Respondent, there were no other parties in the Seventh Circuit Court of Appeals.

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Petitioner Paul S. Osterman respectfully asks that the Court issue a writ of certiorari to review the judgment of the Seventh Circuit Court of Appeals affirming the denial of his motion to suppress based on *Franks v. Delaware*, 438 U.S. 154 (1978).

OPINIONS BELOW

The amended opinion of the court of appeals (App. 1a) is reported at 110 F.4th 928 (7th Cir. 2024). The opinion of the district court (App. 12a) is at *United States v. Osterman*, No. 21-

CR-110, 2022 WL 227501 (E.D.W.I. January 26, 2022).

JURISDICTION

The judgment of the court of appeals was entered on August 1, 2024. Mr. Osterman filed a petition for rehearing on August 13, 2024. On October 23, 2024, an order granting the petition for rehearing and an amended judgment and opinion were issued. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This petition concerns the application of the Fourth Amendment to the United States Constitution which 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.

U.S. Const. amend IV.

STATEMENT OF THE CASE

Paul S. Osterman seeks review of the decision of the Seventh Circuit Court of Appeals, affirming the denial of his motion to suppress the fruits of a search warrant under *Franks*, 438 U.S. at 154.

On April 6, 2020, Chad Wanta, a detective in Oneida County, Wisconsin, applied for a search warrant so he could place a GPS tracker

on Mr. Osterman's truck. That GPS unit remained on Mr. Osterman's truck for over 6 months, requiring Detective Wanta to apply for new warrants to extend the surveillance every 60 days. Each time he applied for a new warrant, Detective Wanta supplemented his warrant affidavit with information he learned from monitoring the GPS tracker on Mr. Osterman's vehicle.

The warrant affidavit described 8 CyberTipline Reports ("CyberTips") which detailed chat messaging conversations over the social media application MeetMe. The 8 CyberTips, according to the affidavit of Det. Wanta, "appeared related in that the MeetMe user/screen names used by the person being reported were similar, the contents and verbiage used by the person being reported in the messages was consistent, and the location of the Internet Protocol (IP) address used by the person being reported during the chat messaging conversations were all public Wi-Fi locations. All reported chat messaging conversations involved the person being reported by MeetMe, offering to pay money to meet with minor females for sexually explicit purposes."

The usernames documented in the CyberTips were "Jake Jones," "Thor Jones," "Jared Jacob," "Brad Jones," "Jarod", "Jake George," and "Jake." Each of the 8 CyberTips include transcripts of chat conversations in which the user offers to pay for a "much younger girl." The conversations each include similar requests: Jake Jones stated he would

pay cash for an open-minded girl to help him with a fetish; Thor Jones stated "I'll give you serious cash if you can get me a much younger girl;" Jared Jacob stated "I'll pay you if you can find me a much younger girl;" Jake Jones stated "if you can find me a much younger girl, I'll pay you lots;" Brad Jones stated "I'll give you $$$ if you can get me a much younger girl;" Jarod stated "I'll give you $$$ if you can get me a much younger girl;" Jake George stated "I'll give you serious cash if you can get me a much younger girl;" and Jake stated "I'll give you serious cash if you can get me a much younger girl."

Each CyberTip suggested that the IP address used by the individual originated in the Rhinelander, WI region: Jake Jones and Jarod utilized public Wi-Fi at the McDonald's located at 25 S. Stevens Street in Rhinelander; Jared Jacob, Jake George, and Jake utilized public Wi-Fi at Modes Machines & More located at 2100 Lincoln Street in Rhinelander; Thor Jones and Jake Jones utilized IP addresses issued by Northwood Connect – High Speed Internet. Each CyberTip concluded that "[n]o specific person could be identified" as the individual user.

At some point, Detective Wanta began to suspect that Mr. Osterman was the individual responsible for the conduct described in the CyberTips. The evidence implicating Mr. Osterman was thin. Mr. Osterman was inculpated in the warrant affidavit in a single paragraph, Paragraph 12. This paragraph, based on one of the 8 CyberTips, described a

conversation on the social media platform MeetMe between an unidentified individual using the screenname Brad Jones and another user in which Jones solicited and ultimately arranged for a sexual encounter with a 12-year-old girl. Paragraph 12 falsely claimed that the IP address "used by Jones during the messaging was determined to be" the public Wi-Fi at the Holiday Inn hotel in Hillside, Illinois, which took place around 11:42 p.m. on July 4, 2020.

This statement was untrue - no part of the conversation between Brad Jones and JV-1 took place using the Holiday Inn public Wi-Fi. Paragraph 12 concluded by stating that records received from Holiday Inn indicated that Mr. Osterman rented a room at the hotel on July 5, 2019. At the *Franks* hearing, Seargeant Wanta testified that at the time he wrote the affidavit, he believed that a conversation between the user identified as Brad Jones and the victim occurred on July 4, 2019 and that the entire conversation was carried out by Jones using the public Wi-Fi at the Hillside Holiday Inn. Significantly, he admitted that he was incorrect that any conversation between Brad Jones and the victim occurred using the public Wi-Fi at the Hillside Holiday Inn.

Sergeant Wanta further admitted that when he prepared the warrant affidavit, he had in his possession records that showed the IP addresses, dates, and times of each of the conversations between Brad Jones and the victim, but that he failed to thoroughly examine the rest of the IP addresses despite knowing it

was "important information" as far as his investigation was concerned. What's more, Sergeant Wanta testified that the connection he made to Mr. Osterman was because he was a guest at the hotel and that his name was familiar from the investigation in the Rhinelander area, and that Paragraph 12 was the link between Mr. Osterman and the Chicago investigation that identified him for purposes of asking for the GPS warrant.

The purpose of Paragraph 12 was to suggest that Mr. Osterman was at the hotel at the same time that Brad Jones was engaged in a conversation over public Wi-Fi with the victim, creating the inference that Mr. Osterman was the one communicating with the victim using the hotel's Wi-Fi. The obvious problem, however, is that there was no communication with the victim from the hotel Wi-Fi, severing any connection between Brad Jones and the hotel and by extension severing any connection between Brad Jones and Mr. Osterman. By Sergeant Wanta's own testimony, Paragraph 12 provided "the link" to Mr. Osterman.

The affidavit mentioned Mr. Osterman only two other times: first, a reference to brief interaction between Mr. Osterman and the Rhinelander Police Department in February 2020, during which Mr. Osterman was sitting in his truck in the public parking lot outside 2120 Lincoln Street in Rhinelander. Mr. Osterman owned an internet service provider, Northwoods Connect, and was testing the internet speeds of his competitors. Mr. Osterman had two tablets and a cell phone with

him at that time. The other reference was to conversations between Detective Wanta and Mr. Osterman to determine whether it was possible to identify which of his 400 customers might have used Northwoods internet to communicate with the victims detailed in the CyberTips.

Another paragraph in Detective Wanta's affidavit omitted an important fact that undermined the affidavit's emphasis on the likelihood of a single suspect given the consistency between the 8 CyberTips: two weeks prior to swearing out the warrant affidavit, Wisconsin Department of Justice – Division of Criminal Investigation received reports from the National Center for Missing and Exploited Children ("NCMEC") that identified the subject of one of the 8 CyberTips as an individual named Belinda Contreras who was previously the subject of a CyberTip originating in El Paso, Texas. One of the 8 CyberTips now had an identified suspect – Belinda Contreras. The CyberTip associated with Contreras described a conversation on MeetMe between an individual using the name Jarod offering money to another user if that user could procure a "much younger girl," particularly an 8-year-old, and offering to pay $200-300 every week. The IP address Contreras used during the conversation was determined to be a public Wi-Fi access point at the McDonald's in Rhinelander, WI.

Despite identifying a suspect for one of the CyberTips believed to be the work of a single individual, Detective Wanta's affidavit claimed

that no individual could be identified as Jarod, and no mention was made of Contreras. Detective Wanta testified that he discovered the error in omitting reference to Contreras after submitting the warrant affidavit but did nothing to correct it and included the original paragraph in subsequent applications to renew the GPS warrant.

Mr. Osterman asked the district court to suppress the fruits of the GPS warrant based on the false statements and omissions contained in Detective Wanta's affidavit which, once corrected, no longer established probable cause for the GPS warrant. After an evidentiary hearing, the district court held that the affidavit established probable cause despite its inaccuracies. The court therefore denied Mr. Osterman's motion to suppress. (App. 12a). Mr. Osterman entered into a conditional guilty plea reserving his appeal of the denial of his *Franks* motion.

On direct appeal, Mr. Osterman again argued that Detective Wanta demonstrated a reckless disregard for the truth at a minimum when he included false statements and omitted exculpatory facts that were either known to him or would have been known to him had he thoroughly reviewed the records in his possession at the time he swore the affidavits, and that the hypothetical affidavit did not establish probable cause.

The Seventh Circuit issued a decision on August 1, 2024 affirming the district court. Mr. Osterman filed a timely petition for rehearing arguing that the panel misapprehended specific

facts that were highly relevant to the court's analysis and that the panel supplemented the hypothetical affidavit with non-material omitted inculpatory facts.

Mr. Osterman's petition for rehearing was granted in part. (App. 25a). An amended decision was issued on October 23, 2024. (App. 1a). That decision again affirmed the district court. The Seventh Circuit agreed that Detective Wanta acted recklessly when he failed to correct the affidavit to identify Belinda Contreras as the individual responsible for at least one of the CyberTips, but that Detective Wanta was merely negligent in including incorrect information about the use of the Holiday Inn Wi-Fi by the MeetMe user Brad Jones to communicate with the victim. Nevertheless, the Seventh Circuit concluded that once the false statements were removed and the omissions were added, the hypothetical warrant established probable cause to support the GPS warrant. (App. 1a).

REASONS FOR ALLOWANCE OF THE WRIT

Two significant questions that were left open in *Franks* are presented for review, each with a significant circuit split. Certiorari review is appropriate here because the Seventh Circuit Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter. Sup. Ct. R. 10. Of course, the mere existence of even a gaping interpretive chasm has never been sufficient in itself to assure a grant of certiorari. As Supreme Court Rule 10

emphasizes, the Court will only entertain "important matters or important questions of federal law." Because the federal circuit courts of appeals have addressed both questions and failed to come to a consensus, the Supreme Court should exercise its certiorari jurisdiction to resolve the circuit split. In the absence of Supreme Court intervention, it is highly unlikely that the rupture will mend itself.

Franks dealt only with the inclusion of false statements in a warrant affidavit and instructed courts to strike the false statements from the affidavit and determine whether the remaining facts are sufficient to establish probable cause. If so, the false statements were not material, and no Fourth Amendment violation occurred. *Franks*, 438 U.S. at 154. The federal courts of appeals adapted *Franks* to allegations that an affiant omitted facts from the affidavit which, if included, would have negated a finding of probable cause.

In addition to striking any false statements, the court must also add any intentionally or recklessly omitted facts and then evaluate whether probable cause is established. *See, e.g., Betker v. Gomez*, 692 F.3d 854, 860 (7th Cir. 2012) ("We eliminate the alleged false statements, incorporate any allegedly omitted facts, and then evaluate whether the resulting 'hypothetical affidavit' would establish probable cause"); *United States v. Castillo*, 287 F.3d 21, 25 n.4 (1st Cir. 2002) ("With an omission, the inquiry is whether its inclusion in an affidavit would have led to a *negative* finding by the magistrate on probable cause. If a false

statement is in the affidavit, the inquiry is whether its inclusion was necessary for a *positive* finding by the magistrate on probable cause.") (italics in original).

The federal circuit courts of appeals differ in answering the first question presented to this Court: In crafting the hypothetical affidavit, in excising that which is false and including that which was deceptively omitted, is the court free to consider additional inculpatory or context information that was known to law enforcement at the time but was not referenced in the warrant affidavit? Of the federal courts of appeals that have directly addressed the question, the Second, Third and Tenth Circuits allow the hypothetical affidavit to be supplemented not only with the alleged reckless or intentional omission but also with inculpatory and context facts known to law enforcement but omitted from the warrant affidavit. The Fourth, Seventh, Eighth, and Ninth Circuits reject that approach and limit the supplemented facts to the alleged material omissions.

The Second Circuit has adopted the position that all of the relevant evidence can be considered, including additional inculpatory evidence that was not presented to the magistrate. *Cournoyer v. Coleman*, 297 Fed.Appx. 17, 18 (2d Cir. 2008) ("We agree with the District Court that, in light of the additional *inculpatory* evidence omitted from the affidavits, there would have been a sufficient basis to support a reasonable magistrate's belief that probable cause existed, even if the

information referenced by Cournoyer had been included in the affidavits.") (emphasis in original); *Escalera v. Lunn*, 361 F.3d 737, 743-45 (2d Cir. 2004) ("In performing the correcting process, we examine all of the information the officers possessed when they applied for the arrest warrant")

The Third Circuit's approach is similar, allowing the court to supplement the hypothetical affidavit with inculpatory and context information known to law enforcement at the time the warrant was sought. *See United States v. Frost*, 999 F.2d 737, 743 (3rd Cir. 1993) (supplementing hypothetical affidavit with facts that affiant "would have also explained" had he included the alleged material omission); *Dempsey v. Bucknell Univ.*, 834 F.3d 457, 474 (3rd Cir. 2016) ("affidavit reconstructed to include both the recklessly omitted information and the other information that gives it context"); *but cf United States v. Yusuf*, 461 F.3d 374, 387-8 n.12 (3rd Cir. 2006) ("Additional information may be incorporated into an affidavit only if we determine that a government agent made a material omission.").

The Tenth Circuit appears to allow the inclusion of additional information when forming the hypothetical affidavit. *See, e.g., United States v. Kennedy*, 131 F.3d 1371, 1378 (10th Cir. 1997) (allowing inclusion of statistics related to success rate of trained narcotics dog kept by another officer despite not being presented in warrant affidavit to cure the material omission of the dog's handler

regarding poor recordkeeping and a lack of recommended ongoing training).

The First, Fourth, Seventh, Eighth, and Ninth Circuits allow only the alleged material omission to be added to the hypothetical affidavit. *See generally, United States v. Tanguay*, 787 F.3d 44, 50 (1st Cir. 2015) ("Our review of the entire affidavit, supplemented only by the three recklessly omitted clusters of information, supports the conclusion that probable cause existed to search the appellant's home."); *United States v. Lull*, 824 F.3d 109, 119 n.3 (4th Cir. 2016) ("In evaluating whether probable cause would have existed if the omitted statements had been included, we only consider 'the information actually presented to the magistrate during the warrant application process.'"); *Rainsberger v. Benner*, 913 F.3d 640, 650-51 (7th Cir. 2019) ("When, as here, an affidavit is the only evidence presented to a judge to support a search warrant, the validity of the warrant rests solely on the strength of the affidavit. Extrinsic evidence of guilt cannot be used to augment an otherwise defective affidavit.") (cleaned up); *United States v. Reinholz*, 245 F.3d 765, 775 (8th Cir. 2001) ("retroactively supplementing the affidavit with material omissions bolstering probable cause would undermine the deterrent purpose of the exclusionary rule."); *United States v. Davis*, 714 F.2d 896, 900 (9th Cir. 1983) ("The fact that probable cause did exist and could have been established by a truthful affidavit does not cure the error.").

The remaining circuits do not appear to have explicitly addressed the question.

Another question that *Franks* did not answer was what constitutes a "reckless disregard for the truth" in fourth amendment cases, except to state that 'negligence or innocent mistake is insufficient." Several formulations have been developed by the federal circuit courts of appeals, many borrowing from the First Amendment's actual malice standard. For example, in the Seventh Circuit a reckless disregard for the truth can be shown by demonstrating that the officer "entertained serious doubts as to the truth" of the statements, had "obvious reasons to doubt" their accuracy, or failed to disclose facts that he or she "knew would negate probable cause." *Betker v. Gomez*, 692 F.3d at 860 (7th Cir. 2012) (internal citations omitted). In the Third Circuit, "in an officer withholds a fact in his ken that any reasonable person would have known that this was the kind of thing the judge would wish to know, then there is a reasonable inference that the officer acted with reckless disregard for the truth." *Wilson v. Russo*, 212 F.3d 781, 787-88 (3d Cir. 2000) (cleaned up). Other examples include whether a statement "is a fabrication or a figment of a speaker's imagination" even if "the speaker testifies that he believed the statement to be true," *United States v. Brown*, 631 F.3d 638, 648-49 (3d Cir. 2011); or when the omitted facts are so critical to the probable cause determination that the inference of recklessness is compelling. *Rivera v. United States*, 928 F.2d 592, 604 (2d Cir. 1991).

Whether as a result of the slightly different formulations of the recklessness standard or a lack of direct guidance, one recurring fact pattern has emerged but has resulted in inconsistent decisions on recklessness. The second question presented addresses this split: Does it demonstrate a reckless disregard for the truth for an officer to swear to facts in an affidavit that are contradicted by evidence or reports which the officer possesses? This question is more than an application of settled law to the facts of a given case. It raises questions about how to define a reckless disregard for the truth in the context of *Franks* challenges. The Seventh Circuit's application of the standard in this case was inconsistent with the First, Third, and Sixth Circuits' analyses and inconsistent with the Seventh Circuit's own prior precedent, *Rainsberger v. Benner*, authored by Justice Barrett.

In our case, the Seventh Circuit concluded that Detective Wanta's false statement claiming that Brad Jones communicated with the victim using the Hillside Holiday Inn's public Wi-Fi on July 4, 2019 was merely negligent despite the fact that Detective Wanta's Paragraph 12 was describing CyberTip #62900687 which Detective Wanta possessed and reviewed prior to swearing the affidavit. The CyberTip, only 28 pages long, included a list of IP addresses by date and time and which showed that Brad Jones never used the Hillside Holiday Inn's public Wi-Fi in his communication with the victim. This list was actually contained twice in the CyberTip, at page 15 and again at page 24.

At the *Franks* hearing, Detective Wanta testified that he "inadvertently" stated that the conversation between Brad Jones and the juvenile victim occurred over the hotel Wi-Fi and that although he looked over the documents and had them in his possession when he wrote the affidavit, he did not review them "thoroughly enough." He explained that he did not thoroughly review the records because the conversation and possible meet up between Brad Jones and the juvenile victim occurred in Illinois and that he would not be investigating it even though he "knew it was important as far as [his] investigation was concerned." Detective Wanta further testified that Paragraph 12 was the direct link between Mr. Osterman and the investigation for purposes of asking for the GPS warrant.

Several other circuit courts of appeals have concluded that an officer shows a reckless disregard for the truth when he includes false statements in a warrant affidavit that are disproved by records that the officer had in his possession or which were available to him. For example, the Sixth Circuit has repeatedly held that a plaintiff or defendant "shows substantial evidence of deliberate falsehood or reckless disregard when, for example, he presents proof that at the time the officer swore out the affidavit, she knew of or possessed information that contradicted the sworn assertions." *Butler v. City of Detroit*, 936 F.3d 410, 419 (6th Cir. 2019). In *Tlapanco v. Elges*, 969 F.3d 638 (6th Cir. 2020), an officer's warrant affidavit falsely stated that the suspect's Kik username was "Anonymous" resulting in an uninvolved

individual's arrest and extradition from New York to Michigan, while the username of the actual suspect was "Anonymousfl." The officer had reviewed an excel spreadsheet provided by Kik in preparation of the warrant affidavit. The spreadsheet contained the correct username but the officer failed to "expand" the column containing the username so that it was fully visible, seeing only "Anonymous." The Sixth Circuit held that a reasonable jury could find that officer's conduct reckless given that, at the time the officer swore out the affidavit, he possessed information that contradicted the sworn assertions.

In *United States v. Stanert*, the Ninth Circuit found that an officer recklessly disregarded the truth by including a statement in the warrant affidavit that the suspect was previously arrested without also indicating that the arrest did not result in a conviction. The basis of the affidavit was information provided to her by a DEA agent in an investigative report and whom was next to her when she swore out the affidavit over the phone, and the report clearly stated that DEA records indicated that the defendant was not convicted after the earlier arrest. 762 F.2d 775 (9th Cir. 1985).

The Third Circuit was explicit in what is expected of an officer in order to avoid a finding of recklessness: "To hold that an officer cannot be found reckless unless he actually possesses information contradicting his averment would be to grant license to [fabricate facts or even entire affidavits]. Police should be expected to collect and review evidence before seeking a

warrant to invade a citizen's home and person". *United States v. Brown*, 631 F.3d at 649. In our case, Detective Wanta actually possessed information contradicting his averment and failed to thoroughly review the evidence he had in his possession because he did not think he would be responsible for investigating the out-of-state incident.

The Seventh Circuit's decision in this case is illogical, internally inconsistent with the finding that the omissions regarding Belinda Contreras was intentional or reckless, and contrary to the decisions of the several circuit courts of appeals discussed above. In many regards, Detective Wanta's actions were more intentional and culpable than those in the cases described above. Whereas in *Tlapanco* the officer inadvertently failed to expand a column in an excel spreadsheet to view the complete username and was correctly labeled reckless for that failure, in our case Detective Wanta *made the affirmative decision* not to review the CyberTip thoroughly given that it was outside of his jurisdiction, despite the fact that he was swearing to the truth of statements in his affidavit that were based on the contents of that very CyberTip.

The Seventh Circuit held that Detective Wanta was reckless for omitting that one of the CyberTips had a known suspect because he had information in his possession identifying that suspect but failed to correct Paragraph 13 of his warrant affidavit the several times that the affidavit was renewed. Yet no explanation is given for why the Seventh Circuit held that it

was merely negligent for Detective Wanta to include the false statements regarding the IP address and Wi-Fi network used by Brad Jones to communicate with the juvenile victim despite that he had information in his possession that contradicted that assertion but failed to correct Paragraph 12 of his warrant affidavit the several times that the affidavit was renewed. In both instances, Detective Wanta had reports that contradicted his sworn statement at the time the statement was sworn out. In both instances, Detective Wanta failed to correct the false paragraphs despite supplementing the warrant affidavit with new information each time it was renewed. And, as it relates to the IP address and Wi-Fi network used, Detective Wanta testified as to why he chose not to thoroughly perform his job. Contrary to the Seventh Circuit's ruling, both scenarios demonstrate a reckless disregard for the truth.

The "reckless disregard for the truth" standard is the central component of a *Franks* challenge alleging material omissions. Whether specific police conduct violates a defendant's Fourth Amendment rights turns on whether the officer's conduct was negligent or demonstrated a reckless disregard for the truth. Assuming the materiality of the statements, how a court defines recklessness in this context will determine whether a defendant is entitled to suppression of the fruits of that conduct. Whether Officer Wanta's conduct violated the Fourth Amendment should not depend on whether Mr. Osterman's case originated in the Seventh Circuit or the

Third Circuit. Yet that is precisely the case here.

The questions presented give this Court the opportunity to address what *Franks* left unanswered, resolving a decades-long circuit split in both the procedural aspects of *Franks* as applied to omissions and the appropriate standard when measuring the recklessness of an officer's conduct. This is precisely the type of "important matters or important questions of federal law" for which certiorari is most appropriate. Sup. Ct. R. 10.

CONCLUSION

The petition for a writ of certiorari should be granted and the case should be set for full merits briefing and argument.

Respectfully submitted.

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