No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHNNIE LEEANOZG DAVIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

A geofence warrant, directed at a company such as Google, is a law enforcement tool used to obtain location history of user accounts via applications or programs active on someone's cell phone or other device within a geographic area. Warrants of this nature are sweeping as they are limited only by geographic and temporal parameters. The Fifth Circuit has held that such warrants are categorically prohibited as they constitute general warrants in violation of the Fourth Amendment. *United States v. Smith*, 110 F.4th 817, 838 (5th Cir. 2024). But the Fourth Circuit, in *United States v. Chatrie,* 136 F.4th 100 (4th Cir. 2025) (rehearing en banc) (memo), and the Eleventh Circuit in this case, have rejected Fourth Amendment challenges, on varied and fractured grounds, to the use of geofence warrants. Is review warranted to resolve this discord among the circuits?

II.

Does the record taken as a whole demonstrate improper collusion between federal and state law enforcement to make Davis's arrest by state officers subject to the federal presentment requirements set forth in 18 U.S.C. § 3501(c) and Rule 5(a), Fed. R. Crim. P.?

III.

Whether Davis's motion for judgment of acquittal should have been granted on the three carjacking counts for want of sufficient evidence that Davis had the intent to kill or seriously injury anyone?

PARTIES TO THE PROCEEDINGS

The petitioner is Johnnie Leeanozg Davis, the appellant-petitioner below. Respondent is the United States of America, the appellee-respondent below.

CORPORATE DISCLOSURE

The Petitioner, Johnnie Leeanozg Davis, is an individual, so there are no disclosures to be made pursuant to Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

- *United States v. Davis*, No. 23-10184, 109 F.4th 1320 (11th Cir. July 30, 2024).
- *United States v. Davis*, No. 23-10184 (11th Cir. April 30, 2025) (denial of petition for rehearing).
- *United States v. Davis*, No. 23-10184 (11th Cir. May 8, 2025) (mandate).

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The Eleventh Circuit's decision affirming Davis's multiple convictions and his sentencing following trial is published, available at *United States v. Davis*, 109 F.4th 1320 (11th Cir. 2024), and attached as App. at A-1-40. The order denying his request for rehearing is attached as App. at A-41-42. Mandate issued May 8, 2025. App. at A-43-44.

STATEMENT OF JURISDICTION

The Eleventh Circuit issued its final judgment on May 8, 2025. App. C. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY AND PROCEDURAL PROVISIONS

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." U.S. Const. amend. IV.

Chapter 18 U.S.C. § 3501(c) provides:

> In any criminal prosecution by the United States or by the District of Columbia, a confession made or given by a person who is a defendant therein, while such person was under arrest or other detention in the custody of any law-enforcement officer or law-enforcement agency, shall not be inadmissible solely because of delay in bringing such person before a magistrate judge or other officer empowered to commit persons charged with offenses against the laws of the United States or of the District of Columbia if such confession is found by the trial judge to have been made voluntarily and if the weight to be given the confession is left to the jury and if such confession was made or given by such person within six hours immediately following his arrest or other detention: Provided, That the time limitation contained in this subsection shall not apply in any case in which the delay in bringing such person before such

> magistrate judge or other officer beyond such six-hour period is found by the trial judge to be reasonable considering the means of transportation and the distance to be traveled to the nearest available such magistrate judge or other officer.

Rule 5(a)(1)(A), Fed. R. Crim. P., governs appearance upon arrest and provides: "A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise."

Finally, 18 U.S.C. § 2119 sets forth:

> Whoever, with the intent to cause death or serious bodily harm takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so, shall—
>
> **(1)** be fined under this title or imprisoned not more than 15 years, or both . . .

(footnote omitted).

STATEMENT

This Petition arises from Davis's convictions following trial, which involved a 14-count superseding indictment stemming from carjackings, Hobbs Act robberies, and firearm brandishing offenses that occurred on three separate dates: October 30, 2020 (Counts 1-4), November 11, 2020 (Counts 5-10), and January 23, 2020 (Counts 11-14). During his proceedings, Davis filed several motions to suppress. In the first motion, Davis moved to suppress inculpatory statements made to law enforcement after his arrest on the grounds that his presentment rights were violated under 18 U.S.C. § 3501(c) and Rule 5(a), Fed. R. Crim. P. In a second motion to suppress, Davis moved to suppress evidence uncovered pursuant to a geofencing search warrant issued to Google on March 9, 2020. The district court denied both motions and the Eleventh Circuit affirmed. In doing so, the Eleventh Circuit noted: "[w]hether and when a geofence warrant affects a person's reasonable expectation of privacy is an issue of first impression for our circuit." *Davis*, 109 F.4th at 1327.

Davis's case proceeded to trial. At the conclusion of the United States' case, Davis moved for a judgment of acquittal arguing that with respect to the carjacking charges (Counts 1, 5, and 11) the United States failed to present sufficient evidence that Davis had the intent to cause death or serious bodily harm when he purportedly carjacked the victims.

The first question presented considers an issue of first impression; namely, involving the intersection of the Fourth Amendment and geofence warrants issued to internet companies like Google. The questions presented by Davis's case on geofence

warrants and privacy interests under the Fourth Amendment likewise would address discord among the circuits worthy of this Court's final resolution. The Fifth Circuit has held geofence warrants are categorically prohibited as they constitute general warrants in violation of the Fourth Amendment. *United States v. Smith*, 110 F.4th 817, 838 (5th Cir. 2024). Yet, the Fourth Circuit, in *United States v. Chatrie*, 136 F.4th 100 (4th Cir. 2025) (en banc), upheld a district court's determination to deny suppression of a geofence warrant following rehearing en banc, which drew so many separate opinions to described as "a labyrinth of . . . nine—advisory opinions, many pointing in different directions." *Id.* (at 108-09) (Diaz, C.J., concurring).

In Davis's case, the Eleventh Circuit sidestepped the geofence warrant issue determining instead that Davis lacked standing to challenge the geofence warrant at issue "because the search did not disclose any information about the data on his own elective device, reflected only his limited movements in public areas, and did not encompass his home." *Davis*, 109 F.4th 1320. App. at A-2-3. In doing so, a majority of the panel rejected Davis's argument that he has the requisite standing as a Google account holder himself. *Id.* at A-17-18. The concurring opinion took issue with the majority's opinion that the record did not establish that the geofence warrant to Google searched all Google accounts at its initial stage. *Id.* at A-32-34 (Jordan, J., concurring). The panel's decision did not address Davis's claim of a defective or altered warrant concluding that without standing this claim need not be reached. *Id.* at A-9.

This is all to say that between the Fourth, Fifth, and Eleventh Circuits there exist fractured decisions on the intersection of the Fourth Amendment and law enforcement use of sweeping geofence warrants, which requires review by this Court to resolve.

The second question presented is whether the record as a whole demonstrates improper collusion between federal and state law enforcement to make Davis's arrest by state officers subject to the federal presentment requirements set forth in § 3501(c) and Rule 5(a), Fed. R. Crim. P.?

The final question presented is whether Davis's motion for judgment of acquittal should have been granted on the three carjacking counts for want of sufficient evidence that Davis had the intent to kill or seriously injury anyone?

A. Factual Background

1. Overview of the Offense Conduct

On October 30, 2020, Davis allegedly carjacked Charles Rollins and his son (a violation of § 18 U.S.C. § 2119) (Count 1) and robbed a Dollar General Store (a violation of 18 U.S.C. § 1951) (Count 3) while brandishing a firearm during both offenses (violations of 18 U.S.C. § 924(c)(1)) (Counts 2 and 4, respectively). App A-6-7. On November 11, 2020, Davis allegedly carjacked Alan Rivas (Count 5) and robbed a Fresh Market store (Count 7) and another Dollar General store (Count 9) while brandishing a firearm during all three offenses. (Counts 6, 8, and 10, respectively). *Id.* On January 23, 2020, Davis allegedly carjacked Miangle Thomas (Count 11) and

a Sunoco gas station (Count 13) while brandishing a firearm during both offenses (Counts 12 and 14, respectively). *Id.*

Among other arguments, at the conclusion of his trial, Davis argued that the United States failed to present evidence of an interstate nexus for the robbery charges (Counts 3, 7, 9 and 13) and, as such, was due judgments of acquittal on those charges and the corresponding brandishing charges (Counts 4, 8, 10, and 14). *Id.* at A-23. The district court ultimately granted the motion for the robbery charges and the corresponding brandishing charges. *Id.* at A-8.

Ultimately, the jury convicted Davis on Counts 1-2, 5-6, and 11-12 and he received a total sentence of 315 months of imprisonment. *Id.* at A-8.

2. Suppression hearing – Davis's statement to police

Davis first asked the district court to suppress his November 12, 2020, statement to police arguing that the United States failed to comply with the Rule 5(a), Fed. R. Crim. P., presentment requirements. *Id.* at A-7.

Officers obtained state search and arrest warrants and arrested him on eight state charges. *Id.* at A6. After waiving his *Miranda* rights, federal agents alongside Nathan Faggert, who served a dual role as both a state police sergeant and an FBI task force officer, questioned him approximately eight hours after initial detention. *Id.* at A-3, A6. Faggert later initiated a federal case that resulted in a 10-count and then 14-count superseding indictment. *Id.* at A-6.

3. Suppression hearing – the geofence warrant

Davis also sought to suppress all evidence obtained through a geofence warrant issued to Google on March 9, 2010. *Id.* at A-2. As this litigation unfolded, another ground for suppression arose regarding discrepancies in the search warrants filed with the clerk's office and the search warrants purportedly served on Google.

Faggert testified to the geofence warrant as well explaining that law enforcement had no suspect in the investigation, and they turned to seeking a geofence warrant to try to identify Google users in the areas specified by law enforcement, which would hopefully lead to the perpetrator. App. at A-56. This information provided by Google would hopefully allow law enforcement to identify devices (and then suspects) that were consistently in the areas of the offenses. *Id.* at A-102. Faggert had never obtained a geofence warrant before Davis's case. *Id.* at A-56-57.

From video surveillance in the area of a series of carjackings and robberies, law enforcement identified six locations and certain time periods of interest to include in the Google warrant. *Id.* at A-61-64. But Faggert admitted that he had no idea if the suspect(s) used a cell phone or other device during the offenses. *Id.* at A-61.

Faggert explained that the search location parameters contained in Attachment A to the warrant would include anyone with a Google account who happened to be in those areas whether they were driving through, in an office building, or in a motel, apartment, or other dwelling, including homes. *Id.* at A-66-68.

Faggert also testified to an Attachment E included with the search warrant application, which provided "the items to be seized and searched by Google." *Id.* at A-

68. Attachment E outlined a four-step process for Google to 1) query location history data based on the provided parameters, 2) provide anonymous unique identifying numbers and other information for each device within the provided search parameters, 3) respond to law enforcement requests for additional information based on the initial information returned, and 4) provide subscriber information at law enforcement request. *Id.* at A-68-71.

Pursuant to Attachment E, law enforcement could request and receive additional information from Google even outside of the parameters originally listed without having to first present that renewed/updated request to a judge. *Id.* at A-72. Essentially under these steps, law enforcement would use the initial data returned, narrow it, pursue suspect leads, and then request specific subscriber information from Google. *Id.* at A-72.

Faggert also testified to the return of information from Google. *Id.* at A-80-81. This included the initial data returned of all Google subscribers within the parameters provided, more specific information at law enforcement request, and requested subscriber information. *Id.* Although Faggert requested Google search six locations, Google returned with search information for nine locations. *Id.* at A-87. Faggert believed that Google needed to separate the location areas into smaller sections to complete the requested searches, but no response from Google detailed its approach and no judge approved of this process. *Id.* at A-87-89. Finally, law enforcement received subscriber information for three individuals, including a Gmail account for a username containing the name "Yanna." *Id.* at A-84, A-102. This subscriber

information led law enforcement to Davis as law enforcement believed this account belonged to the daughter of Portia Gilbert, Davis's girlfriend. *Id.* at A-84-85, A-103.

During this hearing, an issue arose regarding the Google warrant as it was filed into PACER by the clerk's office. Faggert initially testified that he served the warrant and attachments on Google via an electronic portal set up by Google to handle subpoenas, search warrants, and other legal matters. *Id.* at A-74-75. Counsel for Davis questioned Faggert about Defense's Exhibit 4, which was a copy of the Google warrant that had been retrieved from PACER. *Id.* at A-75. Faggert could not explain why the warrant itself had no attachments although the warrant referenced Attachments A and B. *Id.* at A-75. Faggert admitted he could not be sure of exactly what documents he served on Google through the portal. *Id.* at A-76. However, later on cross-examination, Faggert explained that Google would have had to receive the information contained in Attachment E to complete the multi-step search process outlined within it. *Id.* at A-105.

The Google warrant suppression hearing resumed on May 25, 2022, with further testimony from Faggert. App. at A-117. Prior to this hearing, the United States had disclosed additional relevant documentation that Davis admitted as Defense Exhibits 9-12. *Id.* at A-120. These exhibits included Defense Exhibit 9, which was a copy of the Google search warrant that has been altered and initialed by Faggert changing Attachment "B" to Attachment "E." *Id.* at A-122.

Unlike Defense Exhibit 4, Defense Exhibit 9 included Attachments A-E. *Id*. Those attachments, again, were not appended to the Google warrant filed with the clerk's

office and entered in PACER (Defense Exhibit 4) and had only previously been attached to the search warrant application for that warrant (Defense Exhibit 3). *Id.* Additionally, on Defense Exhibit 9 the typewritten reference to "Attachment B" had been struck and changed to "Attachment E" with Faggert's initials indicating he made the alteration. *Id.*

But Faggert could not say when that change to Attachment E on the warrant had occurred. *Id.* at A-123. All he could say with any certainty was that his typical process would be to make changes or alterations in the presence of the judge. *Id.* Faggert had no explanation for why the warrant filed with the clerk's office and available on PACER did not contain the alteration. *Id.* Similarly, Faggert could not explain why the warrant that he filed with the clerk's office did not contain the attachments and he agreed that the filed warrant only contained reference to Attachments A and B. *Id.* at A-128. On questioning by the United States as to whether those attachments were presented to the judge to obtain the warrant, Faggert testified: "All of the attachments were – should have been placed in front of the magistrate whenever we do the signing for the warrant. All the attachments were there." *Id.* at A-141. Faggert explained that he would have laid out a single copy of the warrant application affidavit (including Attachments A through E) and the one-page warrant before the magistrate. *Id.* at A-143-145.

Nevertheless, while the search warrant filed in the case did not contain Faggert's alterations, the search warrant application filed in the case (Defense Exhibit 3) did contain his changes. *Id.* at A-124-126, A-145-46. Faggert would not agree that he

altered the warrant outside the presence of the judge; only that he could not explain the discrepancy between the officially filed warrant (Defense Exhibit 4) and the warrant later disclosed to Davis (Defense Exhibit 9). *Id.* at A-126. Faggert reiterated that the altered warrant (Defense Exhibit 9) with the Attachments A-E is what Faggert served on Google. *Id.* at A-127. But, again, the warrant he served on Google did not have the timestamp from PACER.

4. Trial

The United States' basic allegation was that on three different occasions, Davis would carjack someone and use that stolen vehicle to commit robberies at businesses around the area. App. at A-4. The prosecution centered on three specific days involving three carjackings and four business robberies. *Id.*

The Eleventh Circuit explained the January 23, 2020, events this way:

> The carjacking and robbery on January 23, 2020, involved a masked man who approached a vehicle, gestured toward a gun in his waistband, and demanded the vehicle, telling the driver not to move and that he wanted her car. The victim testified that she believed the robber would have shot her had she not complied. Later that night, a masked man used the stolen car to rob a gas station in the area. The MPD obtained video surveillance of the area where the suspect dumped the stolen vehicle, and the video showed the suspect get into another car to make his escape. The getaway vehicle's license plate was registered to Stacey Gilbert, the sister of Davis'ss girlfriend, Portia Gilbert.

App. at A-4.

As to the October 30, 2020, events, the Eleventh Circuit stated:

> Another carjacking and robbery occurred in the Montgomery area on October 30, 2020. A man and his fifteen-year-old son, who had pulled over to switch drivers, were approached by a masked man, who put two pistols in the son's face and told them to run. The father later testified that the man probably would have shot his son if they had not given up the car. That same night, the stolen car was used in a robbery at a nearby Dollar General.

App. at A-5.

Finally, as to November 11, 2020:

> A final carjacking and robbery took place on November 11, 2020. A masked man approached the victim's vehicle, stuck a gun through the window, and told the driver, "don't think about it." The perpetrator stole the car, and the victim later said that he believed he could have been shot. Later that night, a masked man used the car to rob a Fresh Market and a Dollar General store in the area.

App. A-6.

Davis admitted to carrying out the carjackings and the robberies on October 30th and November 11th but denied involvement in the January 23rd carjacking and robbery. App. at A-6.

B. Procedural Background

On appeal, Davis argued that the district court erred by denying Davis's two motions to suppress despite multiple Fourth Amendment violations. As to the Google or geofence warrant, Davis asserted (1) he had standing, (2) law enforcement altered the warrant without judicial authorization, and (3) good faith could not apply. Regarding the suppression of Davis's statement, he argued that officers violated his right to timely presentment under federal law. Finally, he set forth a challenge to the sufficiency of the evidence for the United States' failure to set forth evidence that he intended to kill or seriously injury any of the carjacking victims.

The Eleventh Circuit held oral arguments on May 16, 2024. On July 30, 2024, the court affirmed Davis's convictions. It held that Davis lacked standing to challenge the geofence warrant at issue "because the search did not disclose any information about the data on his own elective device, reflected only his limited movements in public

areas, and did not encompass his home." *Davis*, 109 F.4th at 1324 App. at A-2-3. In doing so, the majority rejected Davis's argument that he has the requisite standing as a Google account holder himself. *Id.* at A-17-18. The concurring opinion took issue with the majority's opinion that the record did not establish that the geofence warrant to Google searched all Google accounts at its initial stage. *Id.* at A-32-33 (Jordan, J., concurring). The decision did not address Davis's claim of a defective or altered warrant concluding that without standing this claim need not be reached. *Id.* at A-9.

As to presentment, the Eleventh Circuit held the interaction of state and federal authorities in Davis's case demonstrated a type of routine cooperation that did not rise to the level of collusion necessary for federal presentment requirements to apply to his state-related arrest. *Id.* at A-23.

Finally, the Eleventh Circuit rejected his sufficiency of the evidence claim holding that use of a weapon and certain witness testimony regarding a belief that Davis probably would shoot if the victims did not relinquish their cars was sufficient. *Id.* at A-24.

REASONS FOR GRANTING THE PETITION

I. Review is necessary to resolve discord among the lower circuits on whether the sweeping scope of geofence warrants violate the Fourth Amendment.

Review of Davis's case would allow this Court to address, for the first time, the constitutionality of law enforcement's use of geofence warrants under the Fourth Amendment. Specifically, review would allow this Court to resolve opposing approaches to these types of warrants in the Fourth, Fifth, and Eleventh Circuits.

"A geofence warrant is a specific type of warrant used to collect information on the presence of a cell phone or other device within a specific area during a set time frame, typically corresponding with the timing and location of a crime." App. at A-11. The way in which law enforcement seek and utilize geo-fence warrants typically involves a three-step process involving:

> First, law enforcement specifies the geographic area and timeframe for the search, directing the company where and when to gather data. Second, the company provides law enforcement with an anonymized list of users or devices that match the warrant's temporal and geographical criteria. At this point, law enforcement may seek additional information about specific users outside of the initial search parameters. Third, law enforcement analyzes that information and requests that the company "unmask" certain users and release further identifying information. Law enforcement then uses that identifying information to determine whether any of the users may be connected to the crime.

App. at A-11-12.

The Fifth Circuit recently held, a matter of first impression, that geofence warrants are general warrants that categorically violate the Fourth Amendment. *Smith*, 110 F.4th at 837-38. The central reasoning to this holding is that these types of warrants require a massive search of all Google user accounts, for example, for the process to kick off at step one, described above. *Id.* at 837. In *Smith*, the Fifth Circuit explained just how large of a search is conducted to satisfy law enforcement's geo-fence warrant requests:

> When law enforcement submits a geofence warrant to Google, Step 1 forces the company to search through its *entire* database to provide a new dataset that is derived from its entire Sensorvault. In other words, law enforcement cannot obtain its requested location data unless Google searches through the entirety of its Sensorvault—all 592 million individual accounts—for *all* of their locations at a given point in time. Moreover, this search is occurring while law enforcement officials have *no idea* who they are looking for, or whether the

> search will even turn up a result. Indeed, the quintessential problem with these warrants is that they *never* include a specific user to be identified, only a temporal and geographic location where any given user *may* turn up post-search. That is constitutionally insufficient.

Id. So, while law enforcement's goal is to use a geofence warrant to narrow down to one suspect, the Fifth Circuit indicated that the search tactics implicated by these types of warrants are not narrowed in any way. *Id.* Thus, it concluded "that geofence warrants are general warrants categorically prohibited by the Fourth Amendment." *Id.* at 838.

Contrary to the approach taken by the Fifth Circuit in *Smith*, the Fourth Circuit and the Eleventh Circuit have not held that geofence warrants are categorically prohibited. *Chatrie*, 136 F.4th 100 (4th Cir. 2025) (en banc); App. at A-13. Although neither case followed the same reasoning or approach.

In the panel decision in *Chatrie,* the Fourth Circuit concluded that no Fourth Amendment violation occurred by use of a geofence warrant because the defendant had no reasonable expectation of privacy in data that he voluntarily disclosed to Google. *United States v. Chatrie*, 107 F.4th 319, 330 (4th Cir. 2024), *reh'g en banc granted*, No. 22-4489, 2024 WL 4648102 (4th Cir. Nov. 1, 2024). In other words, no search occurred under the Fourth Amendment. *Id.* It specifically held: "We hold that the government did not conduct a Fourth Amendment search when it accessed two hours' worth of Chatrie's location information that he voluntarily exposed to Google." *Id.* at 339.

That said, the court on rehearing en banc in *Chatrie* issued a per curium decision simply stating: "The judgment of the district court is *AFFIRMED*." *United States v.*

Chatrie, 136 F.4th 100 (4th Cir. 2025) (en banc). The reasoning of the voluminous separate writing was so fractured to be described as a "labyrinth." *Id.* at 108-09 (Diaz, C.J., concurring). "Instead of a Fourth Amendment compass, we've gifted law enforcement (and the public) a labyrinth of—by my count, nine—advisory opinions, many pointing in different directions." *Id.* at 108-09 (footnote omitted) (Diaz, C,J., concurring) (footnote omitted).

The Eleventh Circuit, in Mr. Davis's case, also was tasked with addressing geofence warrants for the first time but sidestepped the issue entirely. Instead, the Eleventh Circuit held that Davis lacked the requisite Fourth Amendment standing to challenge the warrant at all. App. at A-2-3. It held: "We agree with the district court that Davis lacks Fourth Amendment standing to challenge the geofence warrant because the search did not disclose any information about the data on his own electronic device, reflected only his limited movements in public areas, and did not encompass his home." *Id.*

The Eleventh Circuit's determination, however, involved a point of contention within the panel. A majority of the panel rejected Davis's standing argument that as a Google Account holder his privacy interests were implicated. *Id.* at A-17-18. In doing so, it indicated "there is no evidence in the record to support Davis's claim that the geofence warrant required Google to search every existing Google account." *Id.* at A-17.

But, the concurrence partially rejected this claim observing: "[Agent Faggert's] testimony was sufficient to establish that Mr. Davis had one or more Google accounts

and that, as a result, his accounts were reviewed by Google at step one of its response to the geofence warrant." *Id.* at A-38. The concurrence went on to state: "Those accounts, though, were not the subject of Davis's motion to suppress." *Id.* In making this point, however, the decision did not address that Davis had challenged the warrant on its face, particularly regarding the warrant alteration issue.

Review of Davis's case would address a question of exceptional importance: does a Google account holder, like Davis, have a reasonable expectation of privacy to challenge a geofence warrant *ab initio*? This matters in the context of Davis's case considering the warrant alteration issue he raised, which the panel did not reach. Put differently, if his status as a Google account holder implicates a reasonable expectation of privacy at the initial phase or step one of the geofence warrant, then he possesses the requisite standing to challenge the warrant on its face, including his claim of improper alteration. Addressing this question and the other questions posed by the broad scope of geofence warrants would resolve discord between the Fourth, Fifth, and Eleventh Circuits, which have taken varied and fractured positions on whether a geofence warrant implicates Fourth Amendment privacy rights.

Furthermore, in Davis's case, the panel majority was incorrect that the record did not contain evidence that the geofence warrant required Google to search all accounts, which included Davis's account. *See Id.* at A-17-18.

At the May 3, 2022, suppression hearing Agent Faggert testified to the process that Google followed due to the geofence warrant. App. at A-12. He explained generally that "the warrant asks Google to search its database for users that are

identified in the area with the established parameters for information." *Id.* Granted, Faggert testified that Google's first step is to produce an anonymous list of users within the desired location parameters. *Id.* at A-69-71. But it follows that to be able to report the users within the parameters, Google must search though its entire data set of Google account holders to return that data. Moreover, the record in this case was unequivocal that Davis is a Google account holder or subscriber. *Id.* at A-90-91.

This is exactly what the concurring opinion described both as to Davis's status as a Google account holder and the process Google undertakes to search the entirely of its accounts. *Id.* at A-32-33, A-37-38. While the concurrence drew from the record as Davis has set forth above, it also pointed to public record on the process that Google follows to search each existing Google account when faced with a geofence warrant. *Id.* at A-32.

Before rehearing en banc, in *Chatrie*, 107 F.4th at 324, cited by the concurrence, the Fourth Circuit explained:

> At Step One, law enforcement obtains a warrant that compels Google to disclose an anonymous list of users whose Location History shows they were within the geofence during a specified timeframe. But Google does not keep any lists like this on-hand. So it must first comb through its entire Location History repository to identify users who were present in the geofence.

Id. The Fifth Circuit put it this way: "[F]or every single geofence warrant Google responds to, it must search each account in its entire Sensorvault—all 592 million—to find responsive user records. It cannot just look at individual accounts." *Smith*, 110 F.4th 817. Thus, at the outset, based on both the record and matters of public record on Google's approach to geofence warrants, Davis's status as a Google account holder

established a privacy interest the initial search authorized by the geofence warrant. As such, review is warranted to resolve this important question and formulate a cohesive approach to Fourth Amendment analysis of geofence warrants.

II. The Eleventh Circuit's reading of the record comes to the erroneous conclusion that federal and state law enforcement did not collude to avoid federal presentment requirements.

The Eleventh Circuit's determination in Davis's case demonstrates a complete misreading of the federal focus of the investigation into Davis. The investigation was a routine federally focused investigation headed towards federal prosecution and should have been treated as such contrary to the lower courts' determinations. While State authorities played a role, the investigation necessarily relied on federal resources and focused on federal investigative mechanisms with the goal of a federal prosecution. The collaboration that took place between state and federal authorities was improper, which implicated the federal presentment requirements and ultimately required suppression of Davis's statement to authorities.

Davis's case presented a rare issue: a federal presentment issue involving an initial arrest and charges by state investigators where there is a legitimate question of whether (1) there were dual-track state and federal investigations occurring or (2) this investigation was only federal in nature and always heading towards a federal prosecution. If the case falls into the latter situation, Davis has a federal right to presentment that law enforcement clearly violated. In the former situation, however, Davis's rights could only be vindicated if he can prove improper cooperation between state and federal authorities.

Under the common law, that an arresting officer was obliged "to bring his prisoner before a magistrate as soon as he reasonably could." *Corley v. United States*, 556 U.S. 303, 306 (2009). Presentment served as a safeguard against secret detentions and "the evil implications of secret interrogations of persons accused of crime." *McNabb v. United States* 318 U.S. 332, 344 (1943)); *see also Corley*, 556 U.S. at 306-310. In *McNabb*, this Court considered whether the various federal statutes addressing presentment required the exclusion of confessions obtained when investigators held and questioned the defendants for days before they were formally charged. *McNabb*, 318 U.S. at 334-338. As this Court explained:

> [I]n their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. They subjected the accused to the pressures of a procedure which is wholly incompatible with the vital but very restricted duties of the investigating and arresting officers of the Government and which tends to undermine the integrity of the criminal proceeding.

Id. at 341-42.

The presentment rule was later simplified and codified as Rule 5(a)(1)(A), Fed. R. Crim. P. *Corley*, 556 U.S. at 307-08. Under Rule 5(a)(1)(A), "a person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer..." As the Supreme Court later explained, the *McNabb* Rule and Rule 5(a) work in tandem. *See e.g., Upshaw v. United States*, 335 U.S. 410, 412-13 (1948); *Mallory v. United States*, 354 U.S. 449, 353-56 (1957). Section 3501(c) creates a six-hour safe harbor window for officers to bring a defendant before a magistrate—within that window, confessions are presumptively admissible.

In *United States v. Alvarez-Sanchez*, 511 U.S. 350 (1994), this Court held that § 3501(c)'s requirements did not apply to individuals arrested on state charges except potentially when state authorities improperly collaborate with federal authorities in a manner that allows federal authorities to interrogate a defendant without having to worry about presentment requirements. *Id.* at 359. This exception is rooted in *Anderson v. United States*, 318 U.S. 350 (1943)—which was released the same day as *McNabb*—and long predates § 3501(c).

While recognizing these concepts, the Eleventh Circuit failed to properly recognize that Davis's prosecution was always meant to be a federal one. Federal officers played a critical role in the investigation resulting in Davis's arrest and prosecution. While state charges nominally followed Davis's arrest, law enforcement testimony at the various hearings and the evidence presented both pretrial and at trial lead to one conclusion: Davis was going to be prosecuted federally and all efforts to capture him had that goal in mind.

Federal authorities were brought onto the case precisely because the investigation was proving too difficult and expensive for local law enforcement to handle. Federal authorities and resources were needed to bring a carjacker/robber to justice, so the feds took over the efforts. Law enforcement repeatedly referenced the federal crimes being committed in the warrant applications.

Between the investigative evidence, officer's words to Davis during his interrogation, and law enforcement testimony at the suppression hearing, it is evident that this was a federal investigation and prosecution. State warrants were

only used for expediency, not to truly initiate distinct state prosecutions. And these state charges were no-billed by a grand jury while the federal prosecution unfolded. The lower courts' conclusions that this wasn't a federal investigation and prosecution strains credulity based on a full reading of the record.

Davis demonstrated the requisite improper collaboration to trigger the *Alvarez-Sanchez* exception. Again, this investigation couldn't have happened without the federal authorities and resources. The state abandoned the pursuit of these charges during the middle of the federal case. This case isn't like *Alvarez-Sanchez* where true dual-tracks prosecution unfolded. Instead, these circumstances are functionally the same as those in *Anderson* where suspects rights were violated through state-federal cooperation. Accordingly, both the district court and the Eleventh Circuit erred in concluding these circumstances didn't fall within the improper cooperations exception discussed in *Alvarez-Sanchez*. Review is therefore necessary.

III. The Eleventh Circuit erred in denying Davis relief based on a lack of evidence that he intended to kill or seriously injure anyone.

The Eleventh Circuit's position that the United States set forth sufficient evidence that Davis intended to kill or seriously injury anyone in relation to the carjacking and related brandishing counts cannot be reconciled with the record. Review is thus warranted to complete a thorough and sifting review of the trial testimony, which results in the conclusion that the United States presented insufficient evidence on the carjacking and related brandishing counts.

Under § 18 U.S.C. § 2119, governing car jacking, the United States was required to set forth sufficient evidence of an intent to cause death or serious bodily harm.

Contrary to the Eleventh Circuit's decision otherwise, the United States failed to meet its burden.

This Court has previously addressed the § 2119 intent requirement explaining "that at the moment the defendant demanded or took control over the driver's automobile the defendant possessed the intent to seriously harm or kill the driver if necessary to steal the car." *Holloway v. United States*, 526 U.S. 1, 12 (1999). This issue has historically turned on whether "a rational jury [could] conclude beyond a reasonable doubt that" Davis acted with intent to cause death or serious bodily harm if necessary to steal the cars. *United States v. Diaz*, 248 F.3d 1065, 1098 (11th Cir. 2001) (cleaned up).

While the 11th Circuit turned to the presence of a weapon and certain testimony to reject Davis's claim, the testimony was not so cut and dry. For all three counts of alleged carjacking, testimony demonstrated the presence of a firearm. For Counts 1 and 5, Davis allegedly pointed the firearms at the victims. However, on cross-examination, both individuals testifying about the October 30th and November 11th carjackings admitted that they didn't tell police about a gun being pointed at anyone when they were interviewed on the days of their respective carjackings. In Count 11 Davis allegedly nodded his head toward a visible gun at his waist, but he never pointed it anyone. While the United States asked the victim associated with count 11, "What did you think would have happened to you if you hadn't turned over the car," she answered uncertainly, "I don't know. He could have shot me or – I don't know." The other two victims were likewise uncertain what would happen.

There were no actual verbal threats or violence used to accomplish the theft of the victims' vehicles. At most, Davis's actions amounted to "an empty threat or intimidating bluff" to convince the victims to give up their vehicles. *Holloway*, 526 U.S. at 11. While empty threats and intimidating bluffs might suffice to show simple intimidation, this Court has made clear that toothless hints at consequences are "not enough to satisfy § 2119's specific intent element."

In fact, the carjackings and robberies in question involved at least a dozen individuals and not a single person got hurt, let alone seriously harmed or killed. There simply was not sufficient evidence that Davis intended to seriously harm or kill anyone during his carjackings and review is warranted to apply a sifting analysis of the trial testimony to the standard set forth in *Holloway*.

CONCLUSION

For these reasons, this Court should grant Davis's petition for a writ of certiorari to address the questions presented.

Respectfully submitted,

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