

No. 25-112

In the Supreme Court of the United States

OKELLO T. CHATRIE, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner is entitled to suppression of evidence on the theory that the government violated the Fourth Amendment by obtaining—pursuant to a warrant—two hours of location information about cellphone users who had opted into Google storage of their location history and who were in a particular location during the hour of a bank robbery.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-142a) is reported at 136 F.4th 100. The prior order of the court of appeals (Pet. App. 143a-144a) is available at 2024 WL 4648102. An additional opinion of the court of appeals (Pet. App. 145a-265a) is reported at 107 F.4th 319. The opinion of the district court (Pet. App. 264a-344a) is reported at 590 F. Supp. 3d 901.

JURISDICTION

The judgment of the court of appeals was entered on April 30, 2025. The petition for a writ of certiorari was filed on July 28, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Virginia, petitioner was convicted on one count of armed robbery of a credit

union, in violation of 18 U.S.C. 2113(a) and (d); and one count of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(i) and (ii). Judgment 1. Petitioner was sentenced to 141 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. A panel of the court appeals affirmed. Pet. App. 145a-263a. The court granted rehearing en banc, *id.* at 143a-144a, and also affirmed, *id.* at 1a-142a.

1. At approximately 4:50 p.m. on May 20, 2019, petitioner entered the Call Federal Credit Union in Midlothian, Virginia. Pet. App. 265a. He held a cellphone to his face and appeared to be speaking to someone. C.A. J.A. 112, 1025. After putting the phone away, petitioner approached a teller and presented a handwritten note that read, in part, “I’ve been watching you for sometime * * * now. I got your family as hostage and I know where you live, [i]f you or your coworker alert the cops or anyone your family and you are going to be hurt.” Pet. App. 266a (citation omitted; brackets in original). The note added, “hand over all the cash, I need at least 100k and nobody will get hurt and your family will be set free.” *Ibid.* (citation omitted).

After the teller replied that she did not have access to that amount of money, petitioner pulled out a silver and black firearm. Pet. App. 266a-267a. While openly holding the gun, he forced everyone to the ground and escorted the manager and others to the credit union’s safe. *Id.* at 267a. Petitioner forced the manager to open the safe and place \$195,000 into a bag. *Ibid.* He then fled on foot. *Ibid.*

2. After responding to the scene, Detective Joshua Hylton interviewed witnesses and reviewed security camera footage, which—among other things—showed

the robber using a cellphone immediately before the robbery. Pet. App. 291a-292a. After several weeks of additional investigation, Detective Hylton lacked any promising leads about the identity of the robber. *Id.* at 292a-293a. In June 2019, he sought and obtained a geofence warrant directed at Google from the Chesterfield Circuit Court of Virginia. *Id.* at 293a.

a. A geofence warrant is an investigative tool that helps officers to identify unknown suspects and witnesses of a crime using cellphone location information stored by a third-party company, such as Google. See Br. in Opp. at 3, *Smith v. United States*, No. 24-7237 (Oct. 2, 2025). Such a warrant is focused on a specific time and location window for which the issuing judicial officer finds probable cause that evidence of a crime will be found. See Pet. App. 285a.

Google has been the primary recipient of geofence warrants, because for several years it maintained a Location History database called Sensorvault that stored cellphone location information associated with specific users at a sufficiently granular level to enable Google to respond to such warrants. Br. in Opp. at 4, *Smith, supra* (No. 24-7237); see Pet. App. 272a. Location History is a Google feature that allows users to “keep track of locations they have visited while in possession” of their mobile devices. Pet. App. 270a. Google uses that information to provide users with features like traffic updates about their commutes. *Id.* at 168a. Google also uses location information to target ads to users based on their proximity to a particular business. *Id.* at 271a.

Google’s Location History service, however, is turned off by default. Pet. App. 273a. A user must instead choose to opt into the Location History service in order for Google to track the user’s location history.

Ibid. Approximately one-third of active Google users have opted in and have Location History enabled. *Id.* at 274a. And when responding to a geofence warrant, Google can provide cellphone location history only for those users that opted into Location History during the relevant timeframe. See *id.* at 272a-274a.

b. In this case, Detective Hylton decided to seek a geofence warrant directed at Google in the course of his investigation of the credit union robbery. Pet. App. 292a. Detective Hylton had applied for geofence warrants in other cases, after consulting with and obtaining the approval of prosecutors. *Ibid.* Drawing on that experience, in this case Detective Hylton attached to his warrant application an affidavit that described the facts of the robbery, including that, before the robbery, the robber held a cellphone to his ear and appeared to be speaking with someone. *Id.* at 292a, 297a.

The application explained, among other things, that the majority of cellphones are smartphones; that “[n]early every” Android phone “has an associated Google account”; that Google “collects and retains location data” from such devices when the account owner enables Location History; and that Google collects location information from non-Android smartphones if the devices are “registered to a Google account and the user has location services enabled.” C.A. J.A. 113; see *id.* at 107-117. And it sought a warrant focused on identifying and obtaining further information about devices that were within 150 meters of a specific latitude and longitude point near the bank between 4:20 p.m. and 5:20 p.m. on the day of the robbery. Pet. App. 294a-295a; Gov’t C.A. Br. 6.

A state magistrate found probable cause for the warrant, which authorized disclosure of information in

three steps. Pet. App. 294a-296a. In the first step, Google would provide anonymized information about accounts linked to devices in that area at that time. *Id.* at 295a. At the second step, after law enforcement reviewed that information to identify a set of relevant accounts, Google would provide anonymized location data for a total period of two hours (an additional 30-minute window on each end of the original time range) not limited to the original 150-meter circle. *Id.* at 296a; Gov't C.A. Br. 6-7. At the third step, after law enforcement had reviewed the additional information to further narrow the set of relevant accounts, Google would provide deanonymized information about a specific requested set of accounts, including usernames and email addresses. Pet. App. 296a; Gov't C.A. Br. 7-8.

In executing the warrant, at step one, Google identified 19 accounts that its historical database indicated as having been in the 150-meter radius during the hour of the robbery. Pet. App. 295a-296a, 298a-299a. The list that Detective Hylton provided to Google at step two was ultimately narrowed to nine of those 19 accounts. *Id.* at 299a-300a. And at Step Three, Detective Hylton asked for, and received, in June 2019, subscriber information from only three. *Id.* at 300a-301a. One of these accounts belonged to petitioner. *Ibid.*; Gov't C.A. Br. 9.

c. In August 2019, law enforcement executed federal search warrants on residences associated with petitioner. C.A. J.A. 1446. In executing those warrants, officers discovered two robbery-style demand notes from a bedroom belonging to petitioner; nearly \$100,000 in U.S. currency (including bills wrapped in bands signed by the victim bank teller); and a silver and black 9mm semi-automatic pistol. *Ibid.*

After petitioner was placed under arrest and advised of his *Miranda* rights, he admitted to the Call Federal Credit Union robbery and to using the 9mm semi-automatic pistol during the robbery. C.A. J.A. 1446.

3. In September 2019, a federal grand jury in the Eastern District of Virginia returned a two-count indictment against petitioner, charging him with armed credit union robbery and brandishing a firearm during and in relation to a crime of violence. Indictment 1-3.

Petitioner moved to suppress the data associated with his location history provided by Google pursuant to the geofence warrant, along with the fruits of that data. C.A. J.A. 25-50. Petitioner argued that the government's acquisition of third-party information from Google had been a "search" within the meaning of the Fourth Amendment, and that the warrant did not comply with the Fourth Amendment's requirements for authorizing a search. *Id.* at 31-48.

After holding an evidentiary hearing, the district court denied petitioner's motion. Pet. App. 264a-344a. The court declined to decide whether petitioner had a reasonable expectation of privacy in the location data that he shared with Google. *Id.* at 308a-312a. The court did, however, address whether the geofence warrant complied with the Fourth Amendment. *Id.* at 312a. And while it did not hold that geofence warrants are categorically unconstitutional, it took the view that the specific warrant here had "lack[ed] sufficient probable cause." *Id.* at 316a; see *id.* at 325a. But the court applied the good-faith exception to the exclusionary rule to find that suppression would be unjustified. *Id.* at 333a-337a.

The district court explained that under *United States v. Leon*, 468 U.S. 897 (1984), "evidence obtained

pursuant to a search warrant issued by a neutral magistrate need not be excluded if the officer’s reliance on the warrant was ‘objectively reasonable.’” Pet. App. 334a (quoting *Leon*, 468 U.S. at 922). Applying that standard, the court here found Detective Hylton’s reliance on the geofence warrant to be reasonable, particularly because “no court had yet ruled on the legality” of geofence warrants when the warrant was sought. *Id.* at 336a. And, observing that there was no improper law enforcement conduct to deter, the court determined that the good-faith exception applied. *Id.* at 336a-337a.

Petitioner entered a conditional guilty plea to both counts, reserving his right to appeal the denial of his motion to suppress. See C.A. J.A. 1428-1443. The district court sentenced petitioner to 141 months of imprisonment, to be followed by three years of supervised release. *Id.* at 1450-1451. The court also ordered \$196,932.01 in restitution to Call Federal Credit Union. *Id.* at 1454.

4. A panel of the court of appeals affirmed. Pet. App. 145a-263a.

The panel explained that execution of the warrant did not constitute a “search” under the Fourth Amendment, because petitioner “did not have a reasonable expectation of privacy in two hours’ worth of Location History data voluntarily exposed to Google.” Pet. App. 156a. The panel emphasized that the government “obtained only two hours’ worth” of petitioner’s Location History data, which did not provide “an ‘all-encompassing record of [his] whereabouts.’” *Id.* at 166a (quoting *Carpenter v. United States*, 585 U.S. 296, 311 (2018)). The panel also emphasized that petitioner “voluntarily exposed his location information to Google by opting in to Location History.” *Id.* at 168a. And the panel found

that “[t]he third-party doctrine therefore squarely governs this case.” *Id.* at 170a; see *id.* at 171a.

Judge Wynn dissented. Pet. App. 187a. He would have held that execution of the geofence warrant was a “search” under the Fourth Amendment and that the geofence warrant in this case was constitutionally deficient. *Id.* at 188a, 239a n.12.

5. After granting rehearing en banc, Pet. App. 143a-144a, the en banc court of appeals affirmed the denial of petitioner’s motion to suppress in a single-sentence per curiam opinion. See *id.* at 4a. Of the 15 judges sitting on the en banc court, 14 judges voted to affirm the denial of the motion to suppress, issuing eight separate concurring opinions. The only rationale garnering a majority of the en banc court was that, at a minimum, the good faith exception to the exclusionary rule applied. Nine judges joined opinions stating that the good-faith exception applies. See *id.* at 5a-22a (Diaz, C.J., concurring); *id.* at 35a (Niemeyer, J., concurring); *id.* at 36a (King, J., concurring); *id.* at 38a n.1 (Wynn, J., concurring in the judgment); *id.* at 97a-99a (Heytens, J., concurring). Only one judge would have reversed the denial of the motion to suppress. See *id.* at 130a-142a (Gregory, J., dissenting).

With respect to other issues, seven judges reasoned that the government had not conducted a “search” within the meaning of the Fourth Amendment. See Pet. App. 81a (Richardson, J., concurring); see also *id.* at 23a (Wilkinson, J., concurring); *id.* at 33a (Niemeyer, J., concurring); *id.* at 36a (King, J., concurring). Seven judges took the view that the government did conduct a search. See *id.* at 38a (Wynn, J., concurring in the judgment); *id.* at 121a (Berner, J., concurring); *id.* at 139a (Gregory, J., dissenting). Chief Judge Diaz declined to

decide the question and would have resolved the case on good-faith grounds alone. *Id.* at 14a.

ARGUMENT

Petitioner principally asks (Pet. 19-33) this Court to grant a writ of certiorari to determine whether the government's use of a geofence warrant directed at Google complied with the Fourth Amendment. A decision from this Court on that question, however, would not in itself have any practical effect on the outcome of this case, because a majority of Fourth Circuit judges, as well as the district court, already correctly determined that under the good-faith exception to the exclusionary rule, evidence obtained pursuant to the geofence warrant should not be suppressed even if the warrant is unconstitutional. See Pet. App. 4a, 336a-337a.

Petitioner therefore also asks (Pet. 34-37) for review of the lower courts' application of the good-faith exception in this particular case. But that factbound issue does not warrant this Court's review; indeed, the Court denied a petition raising similar arguments earlier this Term. See *Smith v. United States*, No. 24-7237 (Nov. 10, 2025). Moreover, even if this case were an appropriate vehicle to address issues concerning geofence warrants directed at Google, any decision in this case may have limited prospective importance given recent changes to Google's internal data-storage policy that would make Google unable to respond to such warrants going forward. This Court should deny the petition.*

* Another pending certiorari petition raises issues concerning geofence warrants. See *Davis v. United States*, petition for cert. pending, No. 25-5189 (filed July 15, 2025). The government has served petitioner with a copy of its briefs in *Davis* and *Smith*, which are also available on this Court's online docket.

1. The court of appeals was correct to affirm the denial of petitioner’s suppression motion, see Pet. App. 4a, because the government’s use of a geofence warrant complied with the Fourth Amendment. As an initial matter, the government in this case did not conduct a “search” within the meaning of the Fourth Amendment. Individuals generally have no reasonable expectation of privacy in information disclosed to a third party and then conveyed by the third party to the government. See *Smith v. Maryland*, 442 U.S. 735, 744 (1979). And petitioner in this case voluntarily shared his cellphone location with Google by opting in to the Location History service, thus relinquishing any privacy right in that information. See Pet. App. 23a (Wilkinson, J., concurring); *id.* at 92a (Richardson, J., concurring).

Petitioner contends (Pet. 30) that this Court’s decision in *Carpenter v. United States*, 585 U.S. 296 (2018), compels the conclusion that the government conducted a search in this case. *Carpenter* held that the government infringes a cellphone owner’s reasonable expectation of privacy when it accesses seven days or more of cellphone location information in light of the “intimate window into a person’s life” that location information can provide when tracked for an extended period. *Id.* at 311; see *id.* at 310 n.3. But the time-and-place-boxed information sought from Google’s Location History is meaningfully different from the cellphone location information considered in *Carpenter*.

The geofence warrant did not provide the government with an “all-encompassing record of [petitioner’s] whereabouts,” or an “intimate window into his personal life.” Pet. App. 91a (Richardson, J., concurring) (brackets and citation omitted). Instead, it provided a record that petitioner had been at the credit union at the time

of the robbery—information not much different from other “‘markers’” left at a public crime scene that do not require a warrant, like “tire tracks” or “boot prints,” *id.* at 32a (Niemeyer, J., concurring)—and a time-boxed amount of information about where he had been before or after. And unlike general cellphone location data of the sort at issue in *Carpenter*, users must affirmatively take the extra step of opting in to Google’s Location History service before the information will be shared—a step that two-thirds of Google users had declined to take when the case was decided. See *id.* at 94a (Richardson, J., concurring).

Petitioner alternatively argues (Pet. 31) that the government conducted a search under a “property-based approach,” on the theory that “Location History belongs to users, not Google.” The panel found that petitioner “forfeited his right to raise this issue on appeal,” but explained that even if he had not done so, it “would still reject it on the merits.” Pet. App. 171a n.20. Petitioner cites no “positive law (state or federal) that gives him an ownership interest in his Location History data,” instead resting on the “thin reed” that Google’s privacy policy refers to Location History data as “‘*your* information.’” *Ibid.* (citation omitted); Pet. 31. Even assuming that petitioner’s forfeited property-based theory were properly before the Court, it would thus fail on the merits.

In any event, even if the government’s request of geofencing information were deemed a search, Detective Hylton obtained a valid and non-general warrant based on probable cause that would have authorized him to obtain the information, consistent with the Fourth Amendment. As an initial matter, the warrant established probable cause—that is, “a fair probability”

that “evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The warrant affidavit established that someone committed an armed robbery at a particular place and time, that the robber held a cellphone to his ear just before the robbery, and that most cellphones are smartphones, many of which Google could track using its Location History service. C.A. J.A. 112-113. There was thus “a fair probability” that Location History information would help to identify the robber. In addition, the warrant was sufficiently particular to satisfy the Fourth Amendment’s Warrant Clause. The warrant specified with precision the items to be seized: two hours of location information associated with electronic devices that were within 150 meters of a specified point near the bank during the hour in which the bank was robbed. *Id.* at 116-117.

Relying on the Fifth Circuit’s decision in *United States v. Smith*, 110 F.4th 817 (5th Cir. 2024), cert. denied, No. 24-7237 (Nov. 10, 2025), petitioner contends (Pet. 32) that as a categorical matter, “geofence warrants are not particularized.” In doing so, petitioner relies on the fact that Google, a private business, needs to cull information from a large database in order to respond to the warrant. *Ibid.* But as the government explained in its brief in opposition in *Smith*, “the Fourth Amendment’s particularity requirement focuses on the information the government *itself* gets to view or employ in its investigation, not the information exposed to private actors that is never shown to the government.” Br. in Opp. at 12, *Smith*, *supra* (No. 24-7237); see *Steagald v. United States*, 451 U.S. 204, 220 (1981) (explaining that general warrants “left to the discretion of

the executing officials the decision as to which * * * places should be searched”) (emphasis added).

Petitioner also argues (Pet. 33) that “[e]ven if geofence warrants are not categorically unconstitutional, this warrant was.” He asserts (*ibid.*) that at Step Two, the geographic and temporal scope of the warrant was too broad, and that at Step Three, Detective Hylton failed to explain why he chose to investigate the three accounts that he focused on. Petitioner cites no authority for either of his case-specific arguments. Nor do his factbound arguments—or any other aspect of his contention that his Fourth Amendment rights were violated—warrant this Court’s review. See Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings.”); *United States v. Johnston*, 268 U.S. 220, 227 (1925) (“We do not grant a certiorari to review evidence and discuss specific facts.”).

2. Indeed, review of that issue would be particularly inappropriate here, because a decision in petitioner’s favor on that issue alone would not be outcome-determinative. A majority of the en banc court of appeals has already determined—correctly—that even if the government violated the Fourth Amendment, suppression is not warranted under the good-faith exception to the exclusionary rule. See Pet. App. 5a-22a (Diaz, C.J., concurring); *id.* at 35a (Niemeyer, J., concurring); *id.* at 36a (King, J., concurring); *id.* at 38a n.1 (Wynn, J., concurring in the judgment); *id.* at 97a-99a (Heytens, J., concurring). That determination means that a decision in petitioner’s favor on the question would not affect his conviction. See Pet. 35 (acknowledging that “if the good-faith exception applies, any opinion issued by this Court would be advisory”).

Petitioner’s speculation (Pet. 34) that the Fourth Circuit judges that have “already opined” on the good-faith issue “may reconsider their reasoning in light of this Court’s Fourth Amendment analysis” is unfounded. Whether evidence should be suppressed under the exclusionary rule is “an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated.” *United States v. Leon*, 468 U.S. 897, 906 (1984) (citation omitted). Petitioner does not explain how a decision from this Court on the Fourth Amendment issue would change the lower courts’ decisions on the suppression remedy, particularly when many of the judges that determined that the good-faith exception applies already agree with petitioner on the constitutional question. See, *e.g.*, Pet. App. 38a n.1 (Wynn, J., concurring in the judgment).

Nor can petitioner show any error in the application of the good-faith exception to this case that would justify this Court’s review. The Fourth Amendment “protects the ‘right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,’” but “says nothing about suppressing evidence obtained in violation of this command.” *Davis v. United States*, 564 U.S. 229, 236 (2011); see *Herring v. United States*, 555 U.S. 135, 139 (2009). To “supplement the [Amendment’s] bare text,” this Court “created the exclusionary rule, a deterrent sanction that bars the prosecution from introducing evidence obtained by way of a Fourth Amendment violation.” *Davis*, 564 U.S. at 231-232. The “‘judicially created remedy’” of the exclusionary rule is “designed to deter police misconduct rather than to punish the errors of judges and magistrates.” *Leon*, 468 U.S. at 906, 916 (citation omitted).

Accordingly, to justify suppression under the rule, a case must involve police conduct that is “sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system” in suppressing probative evidence of criminal activity. *Herring*, 555 U.S. at 144. Suppression is justified under the rule “only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.” *Leon*, 468 U.S. at 919 (citation omitted). As particularly relevant here, under the good-faith exception to the exclusionary rule, evidence will not be suppressed when an officer relies on a judicially issued warrant unless the affiant made knowingly or recklessly false statements, “the issuing magistrate wholly abandoned his judicial role,” the warrant is “facially deficient,” or the warrant was based on an affidavit “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.” *Id.* at 923 (citation omitted). None of that happened here.

The majority of judges below therefore correctly recognized that this Court’s precedents did not justify suppression. The district court, for example, found no “improper law enforcement conduct” to deter through application of the exclusionary rule. Pet. App. 337a; see, e.g., *id.* at 5a-22a (Diaz, C.J., concurring). As the district court observed, “[w]hen Det. Hylton applied for the Geofence Warrant, no court had yet ruled on the legality of such a technique.” *Id.* at 336a. And in “the face of” that “legal uncertainty,” Detective Hylton appropriately relied on his experience and previous consultation with prosecutors and submitted his warrant application

to a neutral and detached magistrate for approval. *Id.* at 336a-337a. Or, as Judge Heytens put it, Detective Hylton “did what we expect reasonable officers to do when faced with such uncertainty.” *Id.* at 98a. Such a course of conduct cannot justify the “substantial social costs”—most notably, “offend[ing] basic concepts of the criminal justice system” by “letting guilty and possibly dangerous defendants go free,” *Herring*, 555 U.S. at 141 (citations and internal quotation marks omitted)—that suppression would produce.

Petitioner’s contrary arguments lack merit. Petitioner suggests (Pet. 34) that the Court should not apply the good-faith exception to an officer’s reliance on a warrant whose “defect is that it is an unconstitutional general warrant—as opposed to lacking adequate probable cause.” Even assuming that this case involved an insufficiently particularized “general warrant,” as the government explained in response to the same argument by the petitioner in *Smith*, “there is no categorical rule that an officer can never rely in good faith on a warrant later determined to be insufficiently particular.” Br. in Opp. at 13, *Smith*, *supra* (No. 24-7237). Instead, the application of the good-faith exception is a case-specific inquiry that allows for consideration of all relevant circumstances. *Ibid.*; see *Herring*, 555 U.S. at 145-146. And petitioner’s factbound challenges to the application of the good-faith exception by the judges below do not present a basis for this Court’s review. See Sup. Ct. R. 10.

Petitioner additionally contends that the good-faith exception should not apply in this case on the grounds that application of the doctrine “will impede this Court from ever deciding the important constitutional questions presented here.” Pet. 35; see Pet. 35-37. But as

this Court explained in *Davis v. United States*, which rejected an argument that “applying the good-faith exception * * * w[ould] stunt the development of Fourth Amendment law,” the development of the law has never been “a relevant consideration in an exclusionary-rule case.” 564 U.S. at 245-246. Instead, “the sole purpose of the exclusionary rule is to deter misconduct.” *Id.* at 246. And that purpose would not be served here—let alone to such an extent as to “outweigh the costs” of exclusion, *Herring*, 555 U.S. at 141.

3. Petitioner asserts (Pet. 19-23) a conflict among state and federal appellate courts over the application of the Fourth Amendment to geofence warrants. Although those courts have taken different approaches to the constitutionality of geofence warrants, petitioner does not identify any decision in which a court has actually suppressed evidence obtained using a geofence warrant directed at Google.

In *Smith*, which was decided after the investigation in this case took place, the Fifth Circuit took the view that law-enforcement officers conducted a “search” within the meaning of the Fourth Amendment when they sought Location History data from Google, and that their geofence warrant was insufficiently particular. 110 F.4th at 836, 838. But it ultimately affirmed the denial of the defendant’s suppression motion, based on the good-faith exception to the exclusionary rule. *Id.* at 840.

Petitioner does not assert a conflict among the circuits on the application of the good-faith exception to geofence warrants. And neither of the two state-court cases involving Google geofence warrants that petitioner cites (Pet. 20-21) found a Fourth Amendment violation at all. See *Wells v. State*, 714 S.W.3d 614, 615

(Tex. Crim. App. 2025) (affirming denial of suppression motion), petition for cert. pending, No. 25-484 (filed Oct. 16, 2025); *Jones v. State*, 913 S.E.2d 700, 703-704 (Ga. 2025). Accordingly, petitioner has no argument that the outcome of his case would be different if it were litigated in a different jurisdiction.

4. At all events, the specific issues raised in the petition may have limited prospective importance in light of recent significant changes in Google’s data-storage policy. Petitioner notes (Pet. 10) that in December 2023, Google announced a new data-storage policy under which Location History would be saved locally, on a user’s device, rather than in Google’s Sensorvault database. See Marlo McGriff, *Updates to Location History and new controls coming soon to Maps* (Dec. 12, 2023), <https://perma.cc/6CMJ-FMWM>. This Office has been informed that all Location History data was deleted from Google’s Sensorvault database by the end of July 2025. Accordingly, it is the government’s understanding that Google will be unable to respond to geofence warrants going forward, except to the extent that Google retains data responsive to specific geofence warrants or geofence preservation requests received before that date. Because Google has been “the most common recipient” of geofence warrants, *Smith*, 110 F.4th at 821 n.2, Google’s policy change significantly diminishes the frequency with which geofence-warrant issues will arise in future prosecutions.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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