No. 25-112

IN THE
Supreme Court of the United States

OKELLO CHATRIE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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OTHER AUTHORITIES

T-Mobile US, Inc., Transparency Report for 2023, https://www.t-mobile.com/news/_admin/uploads/2024/07/2023-Transparency-Report.pdf.....6-7

INTRODUCTION

Geofence warrants are among the most revolutionary law enforcement tools in modern American history. They give police officers and prosecutors a tool they have never previously had—the ability to determine who was present at any location at any time with pinpoint accuracy. If the police want to know who entered an abortion clinic, participated in a political protest, or attended a church service during a particular stretch of time, geofence warrants now provide a way. The law enforcement benefits of geofence warrants are obvious, but so too are the privacy implications and potential for abuse. Given these cross-cutting interests, it is no surprise that lower courts are hopelessly divided on whether, and under what circumstances, geofence warrants comply with the Fourth Amendment.

Yet the government claims that the constitutionality of geofence warrants should evade Supreme Court review—forever. According to the government, the mere fact that a magistrate judge issued a warrant, which inherently occurs in all cases involving geofence warrants, is a sufficient basis to apply the good-faith exception to the exclusionary rule. And, the government claims, this Court should not grant certiorari to review lower courts' application of the good-faith exception because the issue is ostensibly fact-bound. As a result, no matter how hopelessly divided the lower courts are, no matter how difficult it may be for magistrate judges to decide these questions without Supreme Court guidance, the government claims that

this Court should remain silent on the most important Fourth Amendment issue of this generation.

That cannot be right. The Court should grant certiorari on the Fourth Amendment issue and hold that the government cannot obtain a warrant to rummage through millions of user accounts without individualized suspicion—or at a minimum, that a warrant is needed before unmasking users' identities. If the Court is concerned that such an opinion would be advisory because of the good-faith exception, it should also grant certiorari on that issue and hold that the good-faith exception cannot be deployed to permanently insulate geofence warrants from Supreme Court review.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT CERTIORARI AS TO THE FOURTH AMENDMENT QUESTION.

The Fourth Amendment issue in this case deserves Supreme Court review. Lower courts have sharply divided on the constitutionality of geofence warrants—an issue of paramount importance both to law enforcement officials and to ordinary citizens. This case is an ideal vehicle to resolve that question.

A. This Court Should Grant Review to Decide the Conflict of Authority over the Constitutionality of Geofence Warrants.

As the government concedes, "courts have taken different approaches to the constitutionality of geofence warrants." BIO 17. In *United States v. Smith*, 110 F.4th 817 (5th Cir. 2024), *cert. denied*, No. 24-7237, 2025 WL 3131804 (U.S. Nov. 10, 2025), the Fifth Circuit concluded

that geofence warrants are unconstitutional general warrants, in conflict with the views of judges on both sides of the Fourth Circuit's divide. *See* Pet. App. 80a-81a (opinion of Richardson, J.) (finding that no search occurred); Pet. App. 126a-129a (opinion of Berner, J.) (finding that search occurred but rejecting *Smith*).

The government observes that the Fifth Circuit applied the good-faith exception in *Smith* (BIO 17), and hence offers the carefully-worded statement that "petitioner has no argument that the outcome of his case would be different if it were litigated in a different jurisdiction." BIO 18. But going forward, *Smith* establishes Fifth Circuit law that geofence warrants are categorically unconstitutional, and federal magistrate judges will be bound by circuit precedent to deny any geofence warrant applications.[1]

The government does not dispute that, in addition to conflicting with the decision below, *Smith* conflicts with *Wells v. State*, 714 S.W.3d 614 (Tex. Crim. App. 2025), *reh'g denied*, 721 S.W.3d 260 (Tex. Crim. App. 2025), *petition for cert. filed*, No. 25-484 (U.S. Oct. 20, 2025), setting up a conflict of authority between state and federal courts in the same jurisdiction. Nor does the government dispute that *Smith* conflicts with *Jones v. State*, 913 S.E.2d 700 (Ga. 2025), and *People v. Seymour*, 536 P.3d 1260 (Colo. 2023). The government also notes the pending petition for a writ of certiorari in *United States v. Davis*, 109 F.4th 1320 (11th Cir. 2024), *petition for cert. filed*, No. 25-5189 (U.S. July 24, 2024) (BIO 9

[1] *See also United States v. Fuentes*, No. CR-21-358, 2025 WL 484628 (E.D. Okla. Feb. 13, 2025) (holding geofence warrant unconstitutional and declining to apply good faith).

n.*); while the Eleventh Circuit ultimately held that the criminal defendant lacked Fourth Amendment standing to challenge the geofence warrant, the Eleventh Circuit's reasoning that "[t]he Constitution is not concerned with a private party's search of its own records" is similarly incompatible with *Smith*. 109 F.4th at 1331.

The conflict of authority is intolerable. Law enforcement officials, magistrate judges, and tech companies need to know whether geofence warrants are always, sometimes, or never legal. Yet, given the welter of conflicting authority, uncertainty reigns. Law enforcement officials have no idea what information to put into warrant applications or what stages in the geofence warrant process, if any, even require warrants. Magistrate judges—including those in the Fourth Circuit, who must puzzle through the en banc court's many dueling opinions—are forced to reinvent the wheel and decide these complex questions in the context of time-sensitive warrant applications. Tech companies, left baffled by the conflicting judicial guidance, are forced to write Fourth Amendment law on their own. Even within the Fifth Circuit, where the law is now clear for *federal* courts, it is anyone's guess how *state* courts will rule—including in Texas, where the *Wells* court rejected *Smith* but could not agree on anything else.

If geofence warrants do not categorically fail the Fourth Amendment's particularity requirement, the Court should also decide *how* they may be executed—a question also raised in this case. Should a warrant be required only at the first step, to obtain anonymized information, as the government urges? Or should a

warrant be required at the final step, before unmasking people's identities, as Judge Berner concluded below? Pet. 17; *see* Pet. App. 121a-122a, 125a. Contrary to the government's claim (BIO 13), this question is neither "case-specific" nor "factbound." Geofence warrants invariably involve an initial step in which anonymized information is revealed, and a final step in which de-anonymized information is revealed. As such, the question of whether one warrant or two warrants are needed arises in every case involving a geofence warrant.

The constitutionality of geofence warrants presents an important question. Such warrants are now in ubiquitous use and have attracted widespread attention from commentators. Pet. 23-27. The government attempts to minimize the importance of the issue by pointing to "recent significant changes in Google's data-storage policy" which would inhibit Google from responding to geofence warrants. BIO 18. But for several reasons, Google's unilateral business decisions should not deter this Court from granting review.

Even as to Google, the question presented remains pressing. As the government acknowledges, Google retains Location History data responsive to geofence warrants. BIO 18 (noting that Google has preserved Sensorvault "data responsive to specific geofence warrants or geofence preservation requests"). Geofence warrants directed to Google continue to be litigated. *See, e.g.*, Pet. 10-11 (citing geofence litigation from February 2024); *State v. Contreras-Sanchez*, 5 N.W.3d 151 (Minn. Ct. App. 2024), *review granted* (Minn. May 29, 2024); *Nguyen v. State*, 722 S.W.3d 237 (Tex. App. 2025);

United States v. Brown, No. 16-CR-427, 2025 WL 1674283 (N.D. Ga. June 13, 2025).

Second, Google is not the sole recipient of geofence warrants. Law enforcement also makes geofence requests of other technology companies, among them Apple, Lyft, Snapchat, Uber, Microsoft, and Yahoo. *Smith*, 110 F.4th at 821 n.2; *Davis*, 109 F.4th at 1336 (Jordan, J., concurring). Amicus X Corporation notes that it, too, infers the location of users and may be a target of such warrants. *See* Brief of X Corp. as *Amicus Curiae* in support of Petitioner 1 & n.2. Whatever business decisions Google may make, geofence warrants are not going away.

Third, other mass searches of technology records implicate the same Fourth Amendment concerns as this case. Take, for example, reverse keyword search warrants—which use a similar tiered process on Google's history of individuals' internet searches. A sharply divided Colorado Supreme Court rejected a particularity challenge to such a warrant, with the dissenters advocating for the approach taken by *Smith*. *Seymour*, 536 P.3d at 1275-1276; *see* Pet. 22.[2] Or take the new area dump warrants, which seek geofence-like data from cell companies.[3]

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[2] *See also New Jersey v. Bryant*, No. A-1399-24 (N.J. Super. Ct. App. Div. Dec. 4, 2025); *In re Four Applications for Search Warrants Seeking Info. Associated with Particular Cellular Towers a/k/a Tower-Dump Warrants*, No. 25-CR-38, 2025 WL 603000, at *8 (S.D. Miss. Feb. 21, 2025) (concluding that tower dumps are unconstitutional per *Smith*).

[3] *T-Mobile US, Inc., Transparency Report for 2023* at 6, https://www.t-mobile.com/news/_admin/uploads/2024/07/2023-

In sum, Google's current storage policies for location data are no basis to deny review.

B. This Case Is the Ideal Vehicle.

This case is an ideal vehicle to decide the constitutionality of geofence warrants. The factual record here is unusually thorough, developed through the robust participation of both expert witnesses and Google as an amicus in the district court. The constitutional questions have been "fully briefed" and "exhaustively debated" by the parties, the amici, and the Fourth Circuit. Pet. App. 38a (Wynn, J., concurring). The Fourth Circuit's one-line per curiam affirmance gives the Court maximum flexibility to reach and resolve the issues it deems appropriate.

Petitioner also preserved all available Fourth Amendment arguments, including the argument that he had a property right in his Location History. *See Carpenter v. United States*, 585 U.S. 296, 405-406 (2018) (Gorsuch, J., dissenting). The government points to a footnote in the vacated panel opinion by Judge Richardson suggesting that this argument was forfeited because it was raised only in the reply brief and in the facts section of the opening brief, but not in the argument section of the opening brief. BIO 11 (citing Pet. App. 171a n.20). But at the en banc stage, Judge Richardson's opinion for seven judges omitted any reference to forfeiture and instead addressed the argument on the merits. Pet. App. 95a n.21.

Transparency-Report.pdf (reporting receiving 29,550 area dump warrants in 2023).

Judge Richardson's change in position was for good reason: Petitioner did not forfeit this argument. Petitioner prevailed in the district court on the Fourth Amendment question while losing only on the good-faith exception. Because the district court ruled in petitioner's favor on the Fourth Amendment question, he was under no obligation to raise alternative rationales supporting the district court's decision in the argument section of his opening brief. Petitioner therefore appropriately noted that the issue was preserved in his factual background section. *See* 4th Cir. Brief at 14 n.3, No. 22-4489 (4th Cir. Jan. 20, 2023), 2023 WL 373251 (citing J.A. 1368). After the government's merits brief argued that there was no Fourth Amendment violation at all, petitioner's reply brief appropriately raised the property-based argument. 4th Cir. Reply Brief at 11-13, (4th Cir. May 15, 2023), 2023 WL 3580622 (collecting evidence that Chatrie "briefed this argument repeatedly" and re-presenting it to the Fourth Circuit panel). Judge Richardson's initial finding of forfeiture in the vacated panel decision was wrong, and he appropriately corrected that error at the en banc stage. Pet. App. 95a n.21.

C. Petitioner's Fourth Amendment Right Was Violated.

The Court should grant review for the additional reason that the execution of the geofence warrant in this case was unconstitutional.

Under both *Carpenter*'s approach and the property-based approach, the government conducted a search. Petitioner had a reasonable expectation of privacy in his Location History Data. This Court recognized in

Carpenter that cell phone users have a constitutional right to privacy in the record of their movements as recorded by CSLI. 585 U.S. at 310-12. Location History, like CSLI, reveals movements in granular detail. Pet. App. 62a (Wynn, J., concurring); Pet. App. 118a (Berner, J., concurring); *Smith*, 110 F.4th at 831-33. In attempting to confine *Carpenter* to its facts and suggest that searches of Location History are not intrusive (BIO 10-11), the government ignores Location History's surveillance capabilities—it tracks users every two minutes and can pinpoint their location within three meters. 585 U.S. at 311-12; *see* Pet. 29-31; Pet. App. 271a, 274a.

The Court in *Carpenter* also correctly rejected a mechanical application of the third-party doctrine, recognizing that digital "personal location information maintained by a third party does not fit neatly" under the existing third-party precedents. 585 U.S. at 306 (cleaned up). Pen register and bank records are neither as intimately revealing nor as unavoidably enmeshed in daily life as cell phones and the data collection that is the cost of their use. *Id.* at 311; *cf. Smith v. Maryland*, 442 U.S. 735, 742 (1979); *United States v. Miller*, 425 U.S. 435, 442-43 (1976). It is unreasonable to assume that, in enabling Location History, a user assumes the risk in the same way. The government's response that some users declined to enable Location History misses the mark, for it says nothing about the voluntariness of the millions of users who did. BIO 11.

The government also conducted a search under a property-based approach. Like a digital journal, petitioner's Location History belonged to petitioner, and

the government's actions invaded his property interest. Contrary to the government's claim, the fact that Google's policy refers to Location History as "*your* information" (BIO 11) demonstrates that Location History is, in fact, the user's information, not Google's business record. Pet. 31-32.

The government's search was unconstitutional. As *Smith* held, the Fourth Amendment does not authorize a warrant that permits the government to rummage through the data of every single Location History user without individualized suspicion. Pet. 32; *Smith*, 110 F.4th at 837-38. The fact that no human being in the government personally laid eyes on every user's file (BIO 12-13) does not give the government free rein to search those files for incriminating information. Further, as Judge Berner explained, geofence warrants—to the extent they are permissible—should be obtained as a precondition to de-anonymizing accounts. Pet. 33; *see Jones*, 913 S.E.2d at 711 (suggesting that a second warrant may be required before non-anonymous data is unmasked and noting that police there obtained one). That never happened here, so the geofence warrant was unconstitutional for that reason as well. Pet. 33.

II. ALTHOUGH NOT JURISDICTIONALLY NECESSARY, THIS COURT SHOULD GRANT REVIEW ON THE GOOD-FAITH EXCEPTION.

The government urges that deciding the question presented would not have practical effect because suppression would be denied under the good-faith exception. BIO 9, 13-14. The government's position

boils down to the proposition that the Court should never review the constitutionality of geofence warrants, because in every case involving such a warrant, the very fact that the warrant exists is a sufficient basis to invoke the good-faith exception. As the petition explained, the government's position would make the Fourth Amendment question unreviewable in *any* context. Pet. 35.

That position is untenable. The constitutionality of geofence warrants should not permanently escape Supreme Court review, leaving lower courts hopelessly divided forever. *See e.g. Camreta v. Greene*, 563 U.S. 692, 706 (2011) (Courts should not rely on qualified immunity if it means that they would "fail to clarify uncertain questions, fail to address novel claims, fail to give guidance to officials about how to comply with legal requirements.").

There is no jurisdictional barrier to granting certiorari on the first question presented only. The Court could resolve the Fourth Amendment question and remand for further consideration as to the government's good faith. While a majority of the en banc court did endorse the good-faith exception in their separate opinions below, it is speculative to predict how those judges would view the issue in light of a decision by this Court.

But if the Court is concerned that such an opinion would be advisory, the Court should grant review on both questions presented. The good-faith exception is independently cert-worthy—and even if it is not, review would be warranted to ensure the Court has *some*

opportunity to resolve the important Fourth Amendment question presented here.

Contrary to the government's claim (BIO 9, 16), the application of the good-faith exception is not "factbound." Every geofence warrant case presents the same basic fact pattern: the existence of a crime, a place, and a time, without information as to a particular suspect, accompanied by a request to search millions of user accounts. Whether the good-faith exception applies in that context is a question that recurs in every geofence warrant case.

Further, this case presents the question whether the good-faith exception applies when the warrant's defect is that it is an unconstitutional general warrant—as opposed to a warrant lacking adequate probable cause. *Cf. Groh v. Ramirez*, 540 U.S. 551, 563-64 (2004) (denying qualified immunity when warrant plainly failed particularization requirement). That question, too, recurs in every geofence warrant case.

The Court should hold that, when assessing the constitutionality of a *type* of warrant (as opposed to whether probable cause exists in a particular case), the good-faith exception should not apply. *Davis v. United States*, 564 U.S. 229 (2011), on which the government relies, recognizes that "in a future case, we could, if necessary, recognize a limited exception to the good-faith exception" to aid in doctrinal development. *Id.* at 248. This is that case. Geofence warrants are no longer novel, and there is no longer a "dearth of court precedent." *Smith*, 110 F.4th at 840. Instead, there is too *much* precedent—all of it saying something different. It is time for the uncertainty to end.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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