

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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MICHAEL MENDENHALL,  
*Petitioner,*

v.

CITY & COUNTY OF DENVER,  
*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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ANYA BIDWELL  
*Counsel of Record*  
PATRICK JAICOMO  
PAUL SHERMAN  
INSTITUTE FOR JUSTICE  
901 N. Glebe Rd.,  
Suite 900  
Arlington, VA 22203  
(703) 682-9320  
abidwell@ij.org

*Counsel for Petitioner*

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**QUESTION PRESENTED**

The Fourth Amendment provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation.” U.S. Const. amend. IV. “Oath or affirmation,” as originally understood, required a witness with firsthand knowledge of the facts to swear an oath before the issuing magistrate.

Without ever addressing the oath requirement in its legal analysis, this Court in *Jones v. United States*, 362 U.S. 257 (1960), held that hearsay can satisfy the Warrant Clause. *Jones* abandoned the categorical guarantee the Founders embedded in the Fourth Amendment and set the Court on a course toward open-ended balancing, ignoring the constitutional text, its original meaning, and a century and a half of contrary precedent.

The question presented is:

Whether this Court should overrule *Jones* and hold that the Fourth Amendment requires a witness with firsthand knowledge to swear an oath before a warrant can issue.

**PARTIES TO THE PROCEEDING**

Petitioner Michael Mendenhall was the plaintiff-appellant below. Respondent City and County of Denver was the defendant-appellee below.

**RELATED PROCEEDINGS**

U.S. District Court for the District of  
Colorado:

*Mendenhall v. City & County of Denver*  
No. 24-cv-00574 (February 4, 2025)

U.S. Court of Appeals for the Tenth Circuit:

*Mendenhall v. City & County of Denver*  
No. 25-1081 (January 16, 2026)

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**PETITION FOR A WRIT OF CERTIORARI**

Michael Mendenhall petitions for a writ of certiorari to review the Tenth Circuit's judgment in this case.

**OPINIONS BELOW**

The Tenth Circuit's opinion is unreported but available at 2026 WL 125748 and Pet.App.1a–7a. The opinion of the United States District Court for the District of Colorado is unreported but available at 2025 WL 385619 and Pet.App.8a–17a.

**JURISDICTION**

The Tenth Circuit entered its opinion below on January 16, 2026. Petitioner timely files this petition and invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

**CONSTITUTIONAL PROVISION INVOLVED**

The Fourth Amendment to the United States Constitution 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.

## INTRODUCTION

Petitioner Michael Mendenhall respectfully asks for a grant of certiorari in this case, so this Court can squarely address a critically important issue: whether this Court should overrule *Jones* and hold that the Fourth Amendment requires a witness with firsthand knowledge to swear an oath before a warrant can issue.

The answer is yes. The phrase “Oath or affirmation” had a settled meaning at the Founding.<sup>1</sup> In the context of an official proceeding, an oath was a legal mechanism whose force derived from the threat of perjury. Because a person who merely relays what someone else told him cannot commit perjury about the underlying facts, he also cannot swear an oath concerning those facts. See generally Laurent Sacharoff, *The Broken Fourth Amendment Oath*, 74 Stan. L. Rev. 603 (2022).

Only a witness could swear an oath, and only a person with firsthand knowledge could be a witness—someone with what Chief Justice Vaughan called observation of “what hath fallen under his senses.” *Bushell’s Case*, 124 Eng. Rep. 1006, 1009 (1670). When the Founders wrote “Oath or affirmation” into the Warrant Clause, therefore, they were requiring that a person with firsthand

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<sup>1</sup> “[A]ffirmation” was added as an alternative to “Oath” for witnesses whose beliefs prevented them from swearing oaths. See, e.g., Scott Gerber, *Law and the Holy Experiment in Colonial Pennsylvania*, 12 N.Y.U. J.L. & Liberty 618, 650 & n.106 (2019) (explaining that in 1696, Pennsylvania constitutionalized “the Quaker preference for affirming, attesting, or declaring, rather than swearing, when an individual was asked to provide evidence or take an oath”).

knowledge swear to the facts supporting probable cause. Hearsay could not suffice.<sup>2</sup>

For more than 150 years, that is how courts understood the oath requirement. Justice Bradley, riding circuit, held that under the Warrant Clause, “the magistrate ought to have before him the oath of the real accuser.” *In re Rule of Court*, 20 F. Cas. 1336, 1337 (C.C.N.D. Ga. 1877). Every federal circuit to address the question agreed. See Statement, *supra*, at 11–13 & n.4. This Court endorsed the rule in a more general form in *Grau v. United States*, stating that “[a] search warrant may issue only upon evidence which would be competent in the trial of the offense before a jury.” 287 U.S. 124, 128 (1932).

Then, in 1960, this Court decided *Jones v. United States*, holding that an officer could satisfy the Warrant Clause by repeating an informant’s hearsay. 362 U.S. 257, 269 (1960). *Jones* never addressed the oath requirement, let alone considered its original meaning or the wealth of contrary federal precedent. Instead, *Jones* rested on the practical calculation that officers would seek warrants more readily if the bar were lower, *id.* at 270–271, abandoning the categorical guarantee the Founders embedded in the Fourth Amendment and laying the groundwork for the open-ended balancing inquiries that followed.

*Jones* authorized the use of hearsay warrants during the judiciary’s “heady days,” when the Court took it upon

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<sup>2</sup> This petition uses “hearsay” in its Founding-era sense: an out-of-court statement by someone not under oath. See Geoffrey Gilbert, *The Law of Evidence* 107, 152 (1756) (“a mere Hearsay is no Evidence” even for a sworn-in courtroom witness because “the Person who spake it was not upon Oath”).

itself to fashion policy, rather than interpret the law and determine whether it was violated. *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 75 (2001) (Scalia, J., concurring); see also *United States v. Rahimi*, 602 U.S. 680, 711–712 (2024) (Gorsuch, J., concurring) (stating that “seeking to honor the Constitution’s meaning in modern disputes” is a “path [that] offers surer footing than any other this Court has attempted from time to time”).

But “[s]tare decisis does not compel continued adherence to erroneous precedent” that “is contrary to our constitutional design and the [original] understanding.” *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 236 (2019). In both *Crawford v. Washington* and *Ramos v. Louisiana*, for example, the Court rejected precedent-enshrined “open-ended balancing tests” and “functionalist assessment[s],” in favor of “the ancient” and “categorical constitutional guarantees.” *Crawford v. Washington*, 541 U.S. 36, 67–68 (2004) (“open-ended” test; “categorical constitutional guarantees”); *Ramos v. Louisiana*, 590 U.S. 83, 100 (2020) (“functionalist assessment”; “ancient”).

In *Crawford*, this Court overruled a precedent, *Ohio v. Roberts*, that had allowed hearsay at trial. The Court recognized that the Confrontation Clause specified a particular method for determining witness reliability—confrontation—that the Court was not free to override. 541 U.S. at 68. The same logic applies here. The Warrant Clause specifies a particular method for establishing probable cause—through the firsthand account of a witness sworn to tell the truth—and *Jones*, just like *Roberts*, was not free to override it.

Similarly, in *Ramos*, the Court overruled a precedent, *Apodaca v. Oregon*, that had allowed non-unanimous juries to support a criminal conviction. As the Court observed, “at the time of the Sixth Amendment’s adoption, the right to trial by jury *included* a right to a unanimous verdict”—a right it was not the Court’s “role to reassess.” 590 U.S. at 100. The same logic applies here. At the time of the Fourth Amendment’s adoption, the Warrant Clause provided a guarantee that no warrant would issue unless a witness swore to the firsthand knowledge of facts, and *Jones*, like *Apodaca*, should not be allowed to “balance [ ] away” this guarantee. *Ibid.*

Importantly, “replacing categorical constitutional guarantees with open-ended balancing tests” does “violence to their design,” *Crawford*, 541 U.S. at 67–68, and introduces needless uncertainty besides. Under *Jones* and its progeny, officers must guess and courts must evaluate whether hearsay in a warrant application is sufficiently reliable to support probable cause, applying a multifactor test that generates inconsistent results and consumes enormous judicial resources. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). A firsthand-knowledge rule would replace that unwieldy inquiry with a bright-line test—whether a witness swore, from personal knowledge, to the facts supporting probable cause. Bright-line rules are what the Fourth Amendment favors. *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001).

The infrastructure is already in place. Rule 41 of the Federal Rules of Criminal Procedure was designed to ascertain personal knowledge, and did so until 1972, when the Advisory Committee amended it to track *Jones*.

Americans have paid a high price for this departure. Breonna Taylor paid with her life, after Louisville police battered down her door in the middle of the night to execute a warrant built on an officer’s false claim that a postal inspector had confirmed her ex-boyfriend was receiving packages at her home. Carter Page paid with his reputation, after the FBI secured FISA surveillance orders against him on the strength of the Steele dossier—a compilation of unverified secondhand and thirdhand accounts traced to rumors shared “over beers.” And Calvary Christian Academy paid with years of litigation, after California regulators accused the school of violating COVID-19 restrictions and secured a warrant on nothing more than an unverified complaint whose source they never identified to the issuing judge.

This Court should grant certiorari, reconsider *Jones*, and restore the original meaning of the Fourth Amendment’s oath requirement.

## STATEMENT OF THE CASE

### A. Legal background

#### 1. The original understanding of the oath requirement

The Warrant Clause of the Fourth Amendment contains three independent requirements for a valid warrant: (1) probable cause, (2) an oath or affirmation, and (3) particularity. Each does independent constitutional work. Probable cause sets the quantum of proof. Particularity identifies the target. And the oath specifies the method of establishing probable cause: sworn testimony by a witness with firsthand knowledge.

At the Founding, an oath was not merely a formality that *Jones* made it into. It was “an affirmation or deniall \* \* \* for advancement of truth and right”—a solemn legal instrument, administered by authority, whose entire purpose was to secure truthful statements. 3 Edward Coke, *Institutes of the Laws of England* 165 (1644). The instrument worked because it was backed by the threat of perjury. *Id.* at 164. Blackstone defined perjury as committed by one who “*swears* willfully, absolutely and falsely, in a matter material to the issue or point in question.” 4 William Blackstone, *Commentaries on the Laws of England* 137 (1769) (emphasis altered). Because a person who merely relays what someone else told him cannot swear “falsely” about the underlying facts in any meaningful sense, he cannot commit perjury. As William Hawkins explained, the oath must be sworn “absolutely and directly,” and it is not perjury when someone “swears a Thing according as he thinks, remembers or believes.” 1 William Hawkins, *A Treatise of the Pleas of the Crown* 175 (1739).

“Oath” was also shorthand for sworn witness testimony, and witnesses could testify only to what they knew firsthand. Chief Justice Vaughan captured this understanding in *Bushell’s Case*, explaining that a witness swears only to what he has perceived by the “senses.” 124 Eng. Rep. at 1009. A person who did not know the facts firsthand was, by definition, not a witness, and his statement could not be the subject of an oath at all. 1 John Henry Wigmore, *A Treatise on the System of Evidence in Trials at Common Law* § 657, at 751–752 (1904); see also Sacharoff, 74 *Stan. L. Rev.* at 641. In other words, if the facts establishing probable cause come from a person who never swore an oath, those facts are not “supported by

Oath” in any meaningful sense regardless of whether an officer later repeats them in a sworn affidavit.

The warrant process thus required a person with firsthand knowledge to appear before the magistrate and swear to the truth of what he had witnessed. This would then allow the magistrate to “examine upon oath the party requiring a warrant.” 2 Matthew Hale, *Historia Placitorum Coronae* 110–111 (1736). It would also allow this party to “prove” probable cause that the suspect committed the crime. 4 Blackstone at 287. The word “prove” connotes legal evidence, ruling out hearsay. 2 Hawkins at 431 (stating that hearsay is “no manner of Evidence”).

Justice of the peace manuals reflected this understanding. As Richard Burn explained in the American adaptation of Burn’s *Abridgement*, “it is necessary, that the party who demands the warrant be first examined on oath, touching the whole matter.” Richard Burn, *Burn’s Abridgement, or The American Justice* 417 (1792). Importantly, the manuals grounded the personal knowledge requirement in the oath, not in the identity of the person as the real accuser. William Hening is explicit about this: “[I]f the first speech was without oath, another oath that there was such speech \* \* \* [is] of no value in a court of justice.” William Hening, *The New Virginia Justice* 181 (1795).

## **2. Early cases**

Early post-ratification cases confirm the original understanding that “Oath” required sworn testimony by a witness with firsthand knowledge.

One of the most prominent, *Ex parte Bollman*, involved a set of treason cases against Aaron Burr and his alleged co-conspirators, Erick Bollman and Samuel Swartwout. 8 U.S. (4 Cranch) 75 (1807). In *Bollman*, the Court considered whether a warrant of commitment for the imprisonment of Bollman and Swartwout, treated essentially as a Fourth Amendment arrest warrant, could issue based on hearsay. This hearsay included the affidavit by General James Wilkinson who summarized a letter that he received from Burr evidencing Burr's intent to split the United States by creating an independent western nation. *Id.* at 130, 136. The affidavit was hearsay because the affidavit, though sworn, was out-of-court, and its contents were a hearsay repetition of Burr's letter.

Defense counsel, Charles Lee,<sup>3</sup> argued that no such warrant could issue under the Fourth Amendment because the affidavit was hearsay. Lee stated: "All the facts necessary to constitute \* \* \* probable cause must appear upon oath or affirmation. \* \* \* No belief of a fact tending to show probable cause, no hearsay, no opinion of any person, *however high in office*, respecting the guilt of the person accused, can be received in evidence on this examination." *Id.* at 110. At no point did the attorney for the government contradict this legal principle, arguing instead that those types of statements were not intended as direct evidence. One of them, for example, "was to show that the assemblage of a military force by Colonel Burr was a matter of notoriety." *Id.* at 119.

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<sup>3</sup> Charles Lee was a leading attorney of his time who served as America's third Attorney General and represented parties in landmark cases, including *Marbury v. Madison*. See generally Robert J. Reinstein & Mark C. Rahdert, *Reconstructing Marbury*, 57 Ark. L. Rev. 729 (2005).

The Court, in an opinion by Chief Justice John Marshall, avoided the hearsay issue, concluding that, even if the affidavit were true, it did not establish probable cause. *Id.* at 130–131. Two of the four Justices would have gone further—they thought the affidavit could not “be considered as a foundation for a commitment” because it would be “totally inadmissible” at trial. *Id.* at 130.

Marshall’s own view, expressed in a related Burr proceeding, confirms the firsthand knowledge requirement. Marshall explained that in his opinion the affidavit in *Bollman* was admissible because “the material facts alleged may very well be within the knowledge of the witness, although he has failed to state explicitly all the means by which this knowledge is obtained.” *United States v. Burr*, 25 F. Cas. 2, 12–13 (C.C.D. Va. 1807). In other words, Marshall admitted the affidavit because he construed Wilkinson as reporting facts within his personal knowledge, namely, the contents of a letter Wilkinson himself had read. Had Marshall understood Wilkinson to be relaying secondhand accounts from others, his reasoning gives no basis to think he would have admitted the affidavit.

Yet another related Burr case provides an even clearer demonstration of the pervasive common-law understanding that warrants could be issued only on firsthand testimony. *United States v. Burr*, 25 F. Cas. 1, 2 (C.C.D. Ky. 1806). In an affidavit, the prosecuting attorney testified under oath that he had been told Burr was committing a high misdemeanor, and the government used this affidavit to ask the federal circuit court in Kentucky to issue a warrant for Burr’s arrest. *Id.* at 1. The court rejected the motion because the affidavit was based on the testimony of a person (the attorney) who, under

oath, repeated the statements of another person who was not under oath. *Id.* at 2. Stating that the “evidence is the oath of a person who has been informed by one not upon oath,” the court held that the secondhand testimony did not present “legal evidence”—that is, evidence sufficient to be used before a court of law. *Ibid.*

### 3. The majority rule from 1850 to 1960

In the century before *Jones*, federal district and circuit courts enforced the firsthand-knowledge requirement in the Warrant Clause. While this Court never directly addressed the issue, it understood the no-hearsay rule to be the background assumption, as did Congress.

#### *a. Circuit courts*

Federal circuits began confronting the oath requirement more frequently in the 1850s, with the rise of professionalized police. These courts overwhelmingly held that the oath had to be sworn by a firsthand witness. 10 A.L.R.3d 359, § 2[b] (1966) (before *Jones*, “it had been the rule in federal courts that hearsay could not be considered in establishing probable cause for the issuance of a search warrant”); see also Lester Bernhardt Orfield, *Criminal Procedure from Arrest to Appeal* 10–11 (1947) (“[T]he weight of authority \* \* \* [requires] an averment of personal knowledge and belief.”).

Just as at common law, the courts emphasized that requiring less than firsthand knowledge under the Warrant Clause would create at least two problems. First, it would reduce a judge to “a performance purely perfunctory,” since there is no point in examining a witness who is not

testifying about what he personally saw. *Giles v. United States*, 284 F. 208, 214 (1st Cir. 1922). Second, it would split oath from perjury and leave witnesses unaccountable. *Veeder v. United States*, 252 F. 414, 418 (7th Cir. 1918).

On *the first point*, there is no need to look beyond Justice Bradley’s *In re Rule of Court* holding that, under the Fourth Amendment, no warrant for seizure or arrest can issue “upon mere belief, or suspicion of the person making such charge; but only upon probable cause, supported by oath or affirmation of such person, in which shall be stated the facts within his own knowledge constituting the grounds for such a belief or suspicion.” 20 F. Cas. at 1337. This allows “[t]he magistrate [to] judge for himself, and not trust to the judgment of another; whether sufficient and probable cause exists for issuing a warrant.” *Ibid.* Therefore, “an affidavit of some officer, who, upon the relation of others whose names are not disclosed, swears that, upon information, he has reason to believe, and does believe, the person charged has committed the offense charged,” is insufficient to “meet the requirements of the constitution.” *Ibid.*

Other federal circuits agreed. In *Giles*, for example, the First Circuit explained that a witness must “take[] the responsibility of disclosing under oath to a judicial tribunal facts from which such tribunal—not the applicant or affiant—finds probable cause to believe articles particularly described, and properly seizeable on search warrant, are in place.” 284 F. at 214. Because in *Giles*, “[t]he prohibition agent was applicant, affiant, in effect the judge of the existence of probable cause, and the officer serving the writ,” the judge “was ousted from his judicial function and remitted to a performance purely

perfunctory.” *Ibid.* The prohibition agent, on the other hand, became a beneficiary of “a very dangerous amalgamation of powers.” *Ibid.*

*The second point*—accountability—also featured prominently. In *Veeder*, the Seventh Circuit quashed a search warrant issued on the affidavit of a Federal Trade Commission inspector who alleged that he believed certain books and records in the petitioner’s possession would be proof of financial crimes. 252 F. at 416. The court explained that possible perjury charges for the accuser are an important protection from unreasonable warrants: “[T]here must be consequences for the accuser to face. If the sworn accusation is based on fiction, the accuser must take the chance of punishment for perjury. Hence the necessity of a sworn statement of facts[.]” *Id.* at 418.

Overall, federal circuit courts required personal knowledge as a basis for warrants during that time.<sup>4</sup> And so did federal district courts.<sup>5</sup>

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<sup>4</sup> *United States v. Tureaud*, 20 F. 621, 623 (C.C.E.D. La. 1884); *Davis v. United States*, 35 F.2d 957, 957 (5th Cir. 1929); *Sparks v. United States*, 90 F.2d 61, 63–64 & n.2 (6th Cir. 1937) (requiring personal knowledge but finding that it was met by oral testimony); *Wagner v. United States*, 8 F.2d 581, 583–585 (8th Cir. 1925); *Simmons v. United States*, 18 F.2d 85, 88 (8th Cir. 1927); *Kohler v. United States*, 9 F.2d 23, 25 (9th Cir. 1925); *Schencks v. United States*, 2 F.2d 185, 186–187 (D.C. Cir. 1924).

<sup>5</sup> Federal district courts required personal knowledge too. See, e.g., *United States v. Kennedy*, 5 F.R.D. 310, 312–313 (D. Colo. 1946); *United States v. Kaplan*, 286 F. 963, 969 (S.D. Ga. 1923); *United States v. Michalski*, 265 F. 839, 840–841 (W.D. Pa. 1919); *United States v. Baumert*, 179 F. 735, 738–740 (N.D.N.Y. 1910); *United States v. Polite*, 35 F. 58, 59 (D.S.C. 1888).

*b. The Supreme Court*

No Supreme Court authority squarely addressed hearsay in warrant applications before 1960, but the Court in *Grau v. United States* tersely dismissed an affidavit that was not based on personal knowledge as “clearly insufficient.” 287 U.S. at 127. It also, citing to *Giles*, stated that “[a] search warrant may issue only upon evidence which would be competent in the offense before a jury,” a principle that *Giles* derived from the Fourth Amendment’s oath requirement. *Id.* at 128.

During this period, the Court also required firsthand knowledge for warrants under the Fourth Amendment in other contexts. In *Rice v. Ames*, for example, the Court required personal knowledge and oath for a pre-extradition commitment warrant, stating that “[a] citizen ought not to be deprived of his personal liberty upon an allegation which, upon being sifted, may amount to nothing more than suspicion.” 180 U.S. 371, 374 (1901); see also *McGrain v. Daugherty*, 273 U.S. 135, 156–157 (1927) (explaining that a writ of attachment for a custodial holding of a witness must satisfy the Fourth Amendment with an oath and personal knowledge).

*c. Congress*

Congress was not far behind. The Espionage Act of 1917 contained the first comprehensive federal search warrant statute. Title XI, Section 4 of that Act stated that the judge, “before issuing the warrant,” had to “examine on oath the complainant and any witness he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties

making them.” Espionage Act of 1917, tit. XI, § 4, 40 Stat. 217, 228. Section 5 mandated that the “affidavits or depositions [] set forth the *facts*,” as opposed to the *claims*, “tending to establish the grounds of the application or probable cause for believing that they exist.” *Id.* § 5. Together, the two sections amounted to a requirement that the affiant relay “what he saw, or heard, or smelled, or tasted.” *Giles*, 284 F. at 214. In other words, Sections 4 and 5 set out a mandatory, personal-examination procedure, compelling the judge to examine the witness directly, and compelling the witness to set forth facts, not relay another’s account.

Importantly, the Espionage Act’s search warrant provisions governed all federal search warrants for decades, including the warrants issued under the National Prohibition Act, which expressly cross-referenced Title XI. National Prohibition Act, tit. II, § 25, 41 Stat. 305, 315. These provisions were “declaratory of the most carefully guarded previous judicial determinations of the meaning and scope of the Fourth Amendment.” *Giles*, 284 F. at 212.

When the Federal Rules of Criminal Procedure were adopted in 1946, Rule 41 restated and codified these provisions, which at the time were codified as 18 U.S.C. 611–626, with Section 614 being Section 4 and Section 615 being Section 5 of the Espionage Act. See Fed. R. Crim. P. 41(c) advisory committee’s note to 1944 adoption (stating that “[t]his rule is a restatement of existing law, 18 U.S.C. [former] 613–616, 620”).

According to Rule 41, “[a] warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant,” and the

warrant itself had to “state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof.” Fed. R. Crim. P. 41(c) (1946). The original rule said nothing about hearsay. It presupposed that the “affidavits” would come from witnesses with something to swear to, the same background assumption that had governed federal warrant practice since the Espionage Act of 1917.

Following *Jones*, Rule 41 was amended to add that “[t]he finding of probable cause may be based upon hearsay evidence in whole or in part.” Fed. R. Crim. P. 41(c) (1972). The Advisory Committee note explained that “[t]he amendment \* \* \* is intended to make clear that a search warrant may properly be based upon a finding of probable cause based upon hearsay. That a search may properly be issued on the basis of hearsay is current law.” Fed. R. Crim. P. 41 advisory committee’s note to 1972 amendment (citing *Jones*).<sup>6</sup>

#### 4. *Jones* and its aftermath

In *Jones v. United States*—a case that involved a narcotics detective’s affidavit repeating a confidential informant’s account of drug activity—this Court held for

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<sup>6</sup> In 2002, as part of the broader restyling of the Federal Rules of Criminal Procedure, the reference to hearsay was deleted. The Advisory Committee was careful to note that “[t]he Committee did not intend to make any substantive changes in practice,” explaining only that the caselaw had become “perfectly clear” and the reference therefore redundant. Fed. R. Crim. P. 41 advisory committee’s note to 2002 amendment. In other words, the hearsay language in Rule 41 was added in 1972 to conform the rule to *Jones* and deleted in 2002 because *Jones* and its progeny had so thoroughly entrenched the doctrine that there was no need for a specific reference.

the first time that “hearsay may be the basis for a warrant.” 362 U.S. at 271. The Court reached this conclusion by relying on two cases, neither of which involved a warrant. The first, *Brinegar v. United States*, concerned the warrantless search of an automobile suspected of transporting illegal liquor. 338 U.S. 160, 172 (1949). The second, *Draperv. United States*, was about the warrantless arrest of a suspected narcotics courier at a train station. 358 U.S. 307, 309–311 (1959). From these two cases, the Court concluded that if hearsay could support a warrantless action, it should also support a warrant. *Jones*, 362 U.S. at 270.

The Court in *Jones* did not mention the oath requirement. It did not consider the original meaning of “Oath.” And it ignored the majority rule in the federal circuits. *Jones* instead rested on the practical calculation that making warrants easier to obtain would encourage officers to seek them, *ibid.*—a policy judgment that, in later decisions, would grow into the open-ended balancing framework this Court’s cases now require.

The Court’s jurisprudence that followed *Jones* progressively reduced the safeguards available to test the reliability of unsworn accusers. In *United States v. Ventresca*, the Court held that officers need not separate hearsay from personal knowledge in the affidavit. 380 U.S. 102, 109–110 (1965); see also *id.* at 118 (Douglas, J., dissenting) (“Is the belief of this affiant based on personal observation, or on hearsay, or on hearsay on hearsay?”). In *McCray v. Illinois*, the Court held that defendants are not entitled to know the identity of confidential informants. 386 U.S. 300, 313–314 (1967). In *Franks v. Delaware*, the Court held that even if the informant lied, that does not undermine the warrant’s validity. 438 U.S. 154, 171

(1978). And in *Illinois v. Gates*, the Court announced that in issuing a warrant, a magistrate need only consider the “totality of the circumstances,” under which “a deficiency in one [factor] may be compensated for \* \* \* by a strong showing as to the other, or by some other indicia of reliability.” 462 U.S. 213, 233 (1983). *Jones* and its progeny thus rejected “a categorical constitutional guarantee[]” that no warrant shall issue without a firsthand witness testimony with an “open-ended balancing test,” *Crawford*, 541 U.S. at 67–68 (criticizing such an approach), deleting a crucial liberty safeguard and putting more pressure on courts and police officers in the process.

The result is an approach to the Warrant Clause that would have been foreign to the Founders, leaving “the home, the property, and the person of the citizen at the mercy of mere suspicion, and of misstatements and misinformation for which no one could be held accountable.” *Schenck v. United States*, 2 F.2d 185, 187 (D.C. Cir. 1924) (explaining “the purpose of the Fourth Amendment”).

## **B. Factual background**

In March 2023, Petitioner Michael Mendenhall was setting up his expanding catering business in a converted townhouse in downtown Denver. Around 10 p.m. one evening, Mendenhall and a friend heard women screaming and a man yelling just outside his door, which then began to rattle. Concerned for the women’s safety, Mendenhall grabbed a commemorative All-Star Game baseball bat, while his friend opened the door. Mendenhall found a strange man—later identified as Sean Horan—sitting on Mendenhall’s stoop with two dogs and a group of women. Mendenhall told Horan to leave; Horan initially refused,

then announced he would call the police. Mendenhall closed the door. Pet.App.22a–24a.

Horan called 911. When officers arrived, he related an odd, inconsistent account. Horan told officers he was from Elizabeth, Colorado, nearly 50 miles away, but that he often comes to Denver because he is at a place in his life “where I need to walk.” During one of his walks, Horan had run into a group of two or five women (his account varied). Then, Horan said, Mendenhall threatened him. Pet.App.23a–24a.

Adding to the peculiarity, Horan volunteered, unprompted, that he was carrying a Sig Sauer nine-millimeter handgun with an extended magazine. Horan further offered that the gun was the “attack-option” model. Despite Horan’s strange interjections and discrepancies, officers asked few follow-up questions and simply arrested Mendenhall. Pet.App.24a.

The officers then decided to obtain a search warrant to seize the commemorative bat. One officer called Detective Nicholas Rocco-McKeel and recounted Horan’s story over the phone. Rocco-McKeel did not speak to Horan. He prepared a warrant affidavit that relied entirely on what the other officer told him about what Horan had said. Pet.App.10a.

After midnight, a judge issued a search warrant for Mendenhall’s townhouse based on Rocco-McKeel’s double-hearsay affidavit. Pet.App.10a; 26a. Twenty minutes later, an officer entered the empty townhouse and seized Mendenhall’s bat. *Id.* at 12a; 28a. Mendenhall spent the night in jail. *Id.* at 27a. Six days later, Denver dropped all

the charges. *Id.* at 10a. It has yet to return Mendenhall's bat. *Id.* at 27a–28a.

### C. Procedural background

Mendenhall filed a 42 U.S.C. 1983 action against Denver raising a municipal liability claim under *Monell v. Department of Social Services*, 436 U.S. 658 (1978). He alleged that Denver's policy of authorizing hearsay in warrant applications violated the Fourth Amendment's oath requirement, and that the resulting search was unconstitutional.<sup>7</sup> He acknowledged that *Jones* foreclosed his challenge in the lower courts but argued that *Jones* should ultimately be overturned. Pet.App.3a.

The district court dismissed based on *Jones*. Pet.App.17a. The Tenth Circuit affirmed, noting that it was “bound to follow Supreme Court precedent” and that “[a]ny change in the law that Mendenhall seeks must come from the Supreme Court[.]” *Id.* at 6a.

This petition follows.

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<sup>7</sup> Mendenhall chose to challenge only the hearsay-based warrant to search his townhouse and did not challenge his arrest.

**REASONS FOR GRANTING THE PETITION****I. *Jones* was wrongly decided.**

*Jones* was wrongly decided for two main reasons. First, it traded the Warrant Clause’s categorical oath requirement for a judge-made reliability inquiry untethered from text or original meaning. Second, the precedents *Jones* relied on—*Brinegar* and *Draper*—did not actually support its result.

This Court should grant the petition and reconsider *Jones*. As this Court has repeatedly held, *stare decisis* does not require adherence to erroneous precedent. See *Franchise Tax Bd. of Cal.*, 587 U.S. at 236.

**A. *Jones* ignored the Warrant Clause’s text and original meaning.**

*Jones* ignored the oath requirement, not mentioning it, much less analyzing it, and making no effort to discover its meaning or plumb its history. Such an ahistorical, atextual approach would be unthinkable today.

The Warrant Clause provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation.” U.S. Const. amend. IV. Under *Jones*, an officer can satisfy the oath requirement by repeating an informant’s hearsay, adding nothing that the probable-cause inquiry does not already provide and rendering “Oath” surplusage. Contra *Marbury v. Madison*, 5 U.S. 137, 174 (1803) (“It cannot be presumed that any clause in the constitution is intended to be without effect.”).

But as the Founding-era treatises and justice of the peace manuals explained at the time of the Fourth Amendment's enactment, "Oath" meant that a witness had to appear before the magistrate and swear to the truth of what he had personally observed, adding a procedural requirement for the manner in which probable cause to issue a warrant must be established. See Statement, *supra*, at 7–8; compare *Crawford*, 541 U.S. at 50–51 (noting that the Sixth Amendment supplies a particular method for determining reliability: confrontation).

This understanding was confirmed by the First, Fifth, Sixth, Seventh, Eighth, Ninth, and D.C. Circuits—every federal circuit that addressed the issue from 1850 to 1960. See Statement, *supra*, at 13 n.4. As Justice Bradley's circuit opinion explained, "the magistrate ought to have before him the oath of the real accuser." *In re Rule of Court*, 20 F. Cas. at 1337. That's why, as the First Circuit stated, the affiant had to describe in the affidavit "what he saw, or heard, or smelled, or tasted." *Giles*, 284 F. at 214. And, as the Seventh Circuit reiterated, affidavits based on "suspicions, beliefs, or surmises" and not "facts" furnished "under oath" were barred. *Veeder*, 252 F. at 418.

This Court itself endorsed the personal-knowledge rule in *Grau*, where it dismissed an affidavit that was not based on personal knowledge as "clearly insufficient." 287 U.S. at 127. Moreover, Congress enacted two statutes and a rule of criminal procedure, also based on this understanding. See Statement, *supra*, at 14–16.

Had *Jones* analyzed these sources—or considered the oath requirement at all—it would have concluded that the requisite "Oath" and hearsay are incompatible.

**B. *Jones's* reasoning was flawed on its own terms.**

Instead of grappling with text or history that so clearly required a sworn firsthand witness account as a method for establishing probable cause, *Jones* relied on inapposite precedent and based its decision on self-defeating policy reasons.

First, *Jones's* holding relied entirely on *Brinegar* and *Draper* for the proposition that hearsay, which sufficed for warrantless searches or arrests in those cases, suffices for warrants as well. 362 U.S. at 269–270; see Statement, *supra*, at 16–17. But warrantless actions, such as the ones at issue in *Brinegar* and *Draper*, do not demand “Oath.” To say that hearsay may support probable cause in those cases does not answer the separate question of what the oath requirement adds to the Warrant Clause. It is precisely “Oath” that precludes hearsay and compels firsthand knowledge in warrant applications. This obvious textual mistake alone renders *Jones* “egregiously wrong.” *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

Second, *Jones's* policy conclusion that it “would be incongruous” to permit hearsay without a warrant while forbidding it with one, 362 U.S. at 270, inverts the constitutional design. The Warrant Clause was deliberately made harder to satisfy because a warrant is not simply an authorization but a grant of affirmative power—authority to search persons, houses, papers, and effects that an officer would otherwise lack. See *Payton v. New York*, 445 U.S. 573, 585–586 (1980). Interposing a “neutral and detached magistrate” between the citizen and the police is the whole point of the Warrant Clause. *Johnson v. United States*, 333 U.S. 10, 14 (1948).

*Jones* was illogical in other ways that undermine its holding. In *Brinegar* and *Draper*, the officer acted on information received directly from an informant, and for that officer, the informant's statement was firsthand, not hearsay. The officer was standing in the shoes of the magistrate, evaluating the source himself. 2 Hale at 91–92; see also Sacharoff, 74 Stan. L. Rev. at 675. In the warrant context, by contrast, the Constitution demands evaluation by the magistrate, not the officer. As a result, the information cannot be filtered through the officer who had no firsthand knowledge because that precludes the magistrate from evaluating the source. *Brinegar* and *Draper* thus never approved what *Jones* said they did: the use of hearsay by a decisionmaker who has not directly evaluated the source.

For these and other reasons outlined in this petition, *Jones* was wrongly decided and should be reconsidered.

**C. The traditional *stare decisis* factors expose the doctrinal and practical problems with *Jones*.**

*Stare decisis* is not “an inexorable command.” *Ramos*, 590 U.S. at 105 (quoting *Pearson v. Callahan*, 555 U.S. 223, 233 (2009)). Especially in the context of constitutional interpretation, it is important that the Court not hesitate in correcting course, since “a mistaken judicial interpretation of [the Constitution] is often ‘practically impossible’ to correct through other means.” *Id.* at 106 (quoting *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)). Moreover, this Court “ha[s] never relied on *stare decisis* to justify the continuance of an unconstitutional police practice.” *Arizona v. Gant*, 556 U.S. 332, 348 (2009).

The Court has identified four primary factors it considers in its *stare decisis* analysis: (1) whether the decision was well reasoned; (2) the workability of the rule announced; (3) the reliance interests at stake; and (4) the antiquity of the decision. *Montejo v. Louisiana*, 556 U.S. 778, 792–793 (2009). Each factor highlights the doctrinal and practical problems created by *Jones*'s departure from the Fourth Amendment's original meaning and confirms that the question *Jones* decided without analysis deserves this Court's full consideration.

1. *Jones*'s reasoning raises serious doctrinal concerns, as it prioritized “open-ended balancing” by the courts at the expense of text and original meaning. As this Court's decisions in *Crawford* and *Ramos* show, this alone should suffice to reconsider *Jones*.

In *Crawford*, the Court overruled *Ohio v. Roberts*, which had held that the Confrontation Clause permitted admission of hearsay so long as it bore “adequate indicia of reliability.” 541 U.S. at 42. The Court held that such an approach was unfaithful to the original meaning of the Confrontation Clause, which specified the method for ensuring reliability—cross-examination—not merely the result. “To be sure, the [Confrontation] Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural rather than substantive guarantee,” commanding “not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.” *Id.* at 61.

The parallels to the present case are strong. *Roberts* substituted judicial assessment of hearsay reliability for the constitutional procedure (cross-examination). *Jones* substituted judicial assessment of hearsay reliability for the constitutional procedure (oath by a witness with personal knowledge). *Crawford* overruled *Roberts* because the Confrontation Clause specifies a procedure, not merely a standard. The Warrant Clause does the same.

Similarly, in *Ramos*, the Court overruled *Apodaca v. Oregon*, which had permitted non-unanimous jury verdicts. This Court held that at the Founding, “jury” meant a unanimous twelve-person body, and that the Court in *Apodaca* was wrong to subject “the ancient guarantee of a unanimous jury verdict to its own functionalist assessment,” concluding:

When the American people chose to enshrine that right in the Constitution, they weren't suggesting fruitful topics for future cost-benefit analyses. They were seeking to ensure that their children's children would enjoy the same hard-won liberty they enjoyed. As judges, it is not our role to reassess whether the right to a unanimous jury is “important enough” to retain. With humility, we must accept that this right may serve purposes evading our current notice. We are entrusted to preserve and protect that liberty, not balance it away aided by no more than social statistics.

*Ramos*, 590 U.S. at 100.

The same is true here: the text of the Fourth Amendment does not permit hearsay warrants, and the open-ended balancing test for which *Jones* laid the groundwork must yield to the original meaning of “Oath.” Besides, as explained above, *Jones*’s reasoning was flawed on its own terms. The two precedents on which *Jones* relied—*Draper* and *Brinegar*—should have been easily distinguishable because neither involved warrants and therefore had no reason to address the oath requirement.

2. *Jones* produced an unworkable rule that, just like the rule in *Crawford* (541 U.S. at 63), resulted in a byzantine totality-of-the-circumstances framework whose most recent iteration, as announced in *Gates*, 462 U.S. at 230, is difficult for both officers and courts to apply.

Under *Jones* and its progeny, an officer’s affidavit based on an informant’s report must include sufficient information about an informant’s reliability for a magistrate to determine whether to credit the hearsay. But when writing the affidavit, an officer cannot know whether the judge will find the informant sufficiently reliable. Instead, the officer must guess what a judge will decide counts as credible information supporting the finding of probable cause. So in addition to “the often competitive enterprise of ferreting out crime,” officers must also assume an incompatible burden of making “the usual inferences which reasonable men draw from evidence”—a burden reserved for “neutral and detached magistrate[s].” *Johnson*, 333 U.S. at 13–14.

Similarly, when a reviewing court evaluates a magistrate’s probable-cause determination, the totality-of-the-circumstances test becomes a fluid multi-factor inquiry. “[A] deficiency in one [factor]” may be “compensated for

\* \* \* by a strong showing as to the other” or by some other “indicia of reliability,” and the reviewing court must avoid any “grudging or negative attitude \* \* \* towards warrants.” *Gates*, 462 U.S. at 233–236 (cleaned up). The test spawns a tangle of subfactors—whether the informant has provided reliable information in the past, whether she is being paid or offered leniency, whether she has a criminal history—causing courts to split on whether officers *must* disclose these details to the magistrate or merely *may* do so. *E.g.*, *Molina ex rel. Molina v. Cooper*, 325 F.3d 963, 970 (7th Cir. 2003) (must); *United States v. Wold*, 979 F.2d 632, 634–635 (8th Cir. 1992) (may); see Sacharoff, 74 Stan. L. Rev. at 613 & n.47.

Overruling *Jones* would restore a clear, workable rule for law enforcement and the judiciary. The determination would shift from assessing the reliability of hearsay to evaluating whether the witness swore to the truth of his statements—a clear, straightforward rule that is easily enforceable. As this Court has explained, bright-line rules are a good thing, especially in Fourth Amendment jurisprudence, where officers in the field must make quick decisions. See *Atwater*, 532 U.S. at 347; *Dunaway v. New York*, 442 U.S. 200, 213–214 (1979).

3. Reliance interests should not insulate *Jones* from reconsideration.

First, law enforcement’s reliance on precedent cannot outweigh the interest that individuals have in fully protected constitutional rights. *Gant*, 556 U.S. at 349; *Ramos*, 590 U.S. at 111 (discussing “the reliance the American people place in their constitutionally protected liberties”). Besides, “reliance” in this Court’s *stare decisis* analysis

typically refers to business decisions and contractual expectations that are costly to unwind. See *Payne*, 501 U.S. at 828. Government reliance on an unconstitutional practice is not a reliance interest at all. The government has no protected interest in continuing to violate the Constitution, and although adjusting warrant practices will require updated guidance and training, those are ordinary costs of bringing law enforcement into compliance.

Second, the Federal Rules already expressly permit judges to require officers to bring firsthand witnesses before the court, providing the infrastructure for enforcing the oath requirement. Rule 41(d)(2)(A) of the Federal Rules of Criminal Procedure, for example, permits a judge to “examine under oath the affiant and any witness the affiant produces.” Rule 41(d)(2)(C) requires testimony to be recorded. And Rule 41(d)(3), cross-referencing Rule 4.1, permits testimony by telephone or electronic means. As discussed in Statement, *supra*, at 15–16, Rule 41(d)(2)(A) was itself based on the text of the Espionage Act of 1917 back when the judiciary and Congress both understood the Fourth Amendment to require rather than simply allow an examination of witnesses with firsthand knowledge. So while *Jones* carved a shortcut into the Constitutional landscape, the path directed by the Fourth Amendment has always been available. It need not be blazed anew.

Indeed, the personal-knowledge requirement was the law of the land from the Founding until 1960. By that time, officers had confronted organized crime during Prohibition, countered Soviet espionage, and engaged in the full spectrum of modern law enforcement, all without departing from the original meaning of “Oath.”

Modern cases, including complex white-collar and digital investigations, are also compatible with the Constitution's requirement of firsthand testimony. In a financial fraud investigation, for example, the forensic accountant who reviews the records can testify to what he finds. In a cybercrime investigation, the lab technician who analyzes the hash values or traces the IP address can do the same. And if protecting identity is a concern, an informant can testify under seal, as California and New York courts have long approved. See *People v. Hobbs*, 873 P.2d 1246 (Cal. 1994); *People v. Castillo*, 607 N.E.2d 1050 (N.Y. 1992). The informant's identity remains protected. The difference is that the magistrate hears from the informant directly, instead of hearing from an officer merely repeating a secondhand account.

4. Finally, *Jones*'s relative antiquity cannot outweigh its departure from a far older tradition. *Jones* is 65 years old, which is a fraction of the nearly 170 years during which the personal-knowledge rule governed before it. *Jones* displaced a rule that was older than the Republic itself. In *Ramos*, the Court overruled *Apodaca* after just 48 years, noting that it "[s]at uneasily with 120 years of preceding case law." 590 U.S. at 106. *Jones* sits uneasily with even more.

It is true that the administrative burden for making warrant applications may increase if the Fourth Amendment is faithfully applied. Officers would need to present witnesses or at least produce sworn statements supporting the facts underlying probable cause, and judges would

need to review those firsthand materials. But the Warrant Clause requirements are not a dispensable “formalit[y],” *McDonald v. United States*, 335 U.S. 451, 455–456 (1948), any more than a jury or confrontation. Convenience cannot override the Constitution.

*Jones* was wrongly decided and should not be insulated from review.

## II. This issue is extremely important.

*Jones* wrote the oath requirement out of the Warrant Clause, with devastating consequences for Americans. Over sixty years of experience lay bare the wisdom of the Founders’ insistence on the firsthand witness testimony as a precondition for issuing warrants.

Three stories demonstrate how the erosion of that safeguard can affect people from all walks of life:

**1. Breonna Taylor.** In March 2020, Louisville police officers executed a search warrant at Breonna Taylor’s apartment, where they shot and killed the 26-year-old emergency medical technician. Richard Opper et al., *What to Know About Breonna Taylor’s Death*, N.Y. Times (Aug. 23, 2024).<sup>8</sup> Police went searching for Taylor’s ex-boyfriend, Jamarcus Glover, who no longer lived there. *Ibid.* Detective Joshua Jaynes, who submitted the affidavit, swore, however, that a U.S. postal inspector had confirmed that Glover was receiving packages at Taylor’s address. Amina Elahi, *LMPD Officer Admits Part of Breonna Taylor Warrant Was Incorrect*, Louisville Pub.

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<sup>8</sup> <https://www.nytimes.com/article/breonna-taylor-police.html>

Media (Nov. 23, 2020).<sup>9</sup> Had the judge who issued the warrant demanded firsthand testimony from the postal inspector, the warrant would not have issued because the postal inspector later denied making the statement about the packages, which was the basis of the warrant application. Nicholas Bogel-Burroughs et al., *Breonna Taylor Raid Puts Focus on Officers Who Lie for Search Warrants*, N.Y. Times (Aug. 6, 2022).<sup>10</sup>

**2. Carter Page.** In October 2016, the FBI obtained a warrant from the Foreign Intelligence Surveillance Court to surveil Carter Page, a former adviser to the Trump presidential campaign. Ellen Nakashima et al., *FBI Obtained FISA Warrant to Monitor Former Trump Adviser Carter Page*, Wash. Post (Apr. 11, 2017).<sup>11</sup> The warrant application relied centrally on the “Steele dossier”—a series of reports compiled by former British intelligence officer Christopher Steele, who had been retained by a political opposition research firm. No one with firsthand knowledge swore to the truth of the claims contained in the dossier. Catherine Herridge, *Report Footnotes Show FBI Knew Russians Had Early Knowledge of Steele Material*, CBS News (Apr. 17, 2020).<sup>12</sup> As the DOJ Inspector

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<sup>9</sup><https://www.lpm.org/news/2020-11-23/lmpd-officer-admits-part-of-breonna-taylor-warrant-was-incorrect>

<sup>10</sup><https://www.nytimes.com/2022/08/06/us/breonna-taylor-police-search-warrants.html>

<sup>11</sup>[https://www.washingtonpost.com/world/national-security/fbi-obtained-fisa-warrant-to-monitor-former-trump-adviser-carter-page/2017/04/11/620192ea-1e0e-11e7-ad74-3a742a6e93a7\\_story.html](https://www.washingtonpost.com/world/national-security/fbi-obtained-fisa-warrant-to-monitor-former-trump-adviser-carter-page/2017/04/11/620192ea-1e0e-11e7-ad74-3a742a6e93a7_story.html)

<sup>12</sup><https://www.cbsnews.com/news/report-footnotes-show-fbi-knew-russians-had-early-knowledge-of-steele-material/>

General later documented, the information in the dossier came from Steele's "Primary Sub-source"—Igor Danchenko—who in turn obtained it from his own contacts, who themselves lacked direct access to the persons they were reporting on. Office of the Inspector Gen., U.S. Dep't of Justice, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* 186 (Dec. 2019).<sup>13</sup> Danchenko told the FBI that his information came from "word of mouth and hearsay" and "conversation that [he] had with friends over beers," and that some of the allegations were made in "jest." *Id.* at 188. This may have been fine for an opposition research report, but it fell far short of the "FBI's obligation to ensure that the applications were scrupulously accurate." *Id.* at 368 (cleaned up).<sup>14</sup>

**3. Calvary Christian Academy.** In late 2020, during COVID-19, California's Division of Occupational Safety and Health received complaints that Calvary Christian Academy in San Jose was violating masking requirements. Kim Roberts, *California Drops \$67K in Citation Fines Against Calvary Chapel San Jose*, MinistryWatch

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<sup>13</sup><https://oig.justice.gov/sites/default/files/reports/120919-examination.pdf>

<sup>14</sup> The former CIA officer Daniel Hoffman and an investigative reporter Ben Macintyre both suspect that the "Steele dossier" was itself a product of Russian disinformation. Vadim Nikitin, *Among the Private Spies*, London Rev. Books (Apr. 2, 2026), <https://www.lrb.co.uk/the-paper/v48/n06/vadim-nikitin/among-the-private-spies> (reviewing Christopher Steele, *Unredacted: Russia, Trump and the Fight for Democracy* (2024)).

(Dec. 8, 2025).<sup>15</sup> Charging ahead to enforce its rules, the inspectors sought a search warrant to inspect the school’s premises. The warrant application relied on a bare declaration that the school was not in compliance with state law and “failed to verify the identity or role of the reporting person.” *Christian School Subjected to Illegal Search Warrant*, Advocates for Faith & Freedom (last visited Apr. 14, 2026).<sup>16</sup> The agency never confirmed any of the hearsay allegations, failing to disclose to the issuing judge that the only personal observation by an inspector—that an employee was not wearing a mask outdoors—was legal, since outdoor mask requirements did not exist at the time. *Calvary Chapel of San Jose*, Cal/OSHA App. 1564732, Decision After Reconsideration 7 (Cal. Occupational Safety & Health Appeals Bd. Nov. 2, 2023).<sup>17</sup>

After the judge signed the warrant, Cal/OSHA conducted inspections and issued fifteen citations, assessing \$67,330 in penalties. *California Drops \$67K, supra*. Years later, however, a court ruled that the evidence was inadmissible because the warrant affidavit was constitutionally insufficient, and the state ultimately withdrew every citation. *Calvary Chapel*, Cal/OSHA App. 1564732, at 2.

Taylor, Page, and Calvary Christian were all subjected to the injustices that would not have occurred had

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<sup>15</sup><https://ministrywatch.com/california-drops-67k-in-citation-fines-against-calvary-chapel-san-jose/>

<sup>16</sup><https://faith-freedom.com/cases-all/illegal-search-warrant-christian-school>

<sup>17</sup><https://www.dir.ca.gov/oshab/Decisions/DAR/1564732-Calvary-Chapel-San-Jose.pdf>

*Jones* not deleted the Fourth Amendment's oath requirement. It is time for *Jones* to be reconsidered.

### III. This case is a clean vehicle.

This case provides a clean vehicle to reconsider *Jones* for four reasons.

*First*, *Jones* is dispositive. Both courts below acknowledged that *Jones* controls and that “[a]ny change in the law that Mendenhall seeks must come from the Supreme Court.” Pet.App.6a; see also *id.* at 17a. This case cannot be resolved without reconsidering *Jones*.

*Second*, the facts are simple and compelling. The probable cause in the warrant relied entirely on double hearsay—an officer repeated what another officer told him about what an inconsistent and peculiar accuser had claimed. The affiant detective neither observed any relevant facts nor spoke even to Mendenhall’s accuser. Pet.App.11a. Had a magistrate examined the accuser, the bizarre circumstances would have doubtless raised concerns about the underlying probable cause. With the hearsay stripped away, the affidavit lacked probable cause to establish any element of the alleged crime.

*Third*, the case involves a search of a house—the paradigmatic Fourth Amendment concern. Coke called the home each person’s “castle and fortress.” *Semayne’s Case*, 77 Eng. Rep. 194, 195 (1604). The Founding generation subjected home searches to the strictest limits, and this case fits squarely within those. There was no exigency. The search here occurred after midnight, when Mendenhall was already in custody and his property

secure. And the warrant permitting the search was, by Founding-era standards, defective—it authorized the government to enter Mendenhall’s private space based on nothing more than double hearsay.

*Finally*, this Court’s Fourth Amendment jurisprudence over the past two decades confirms that review is appropriate here. The Court has looked to the original understanding of the Fourth Amendment with increasing rigor, especially when it comes to the Unreasonableness Clause and the exclusionary rule. See *Torres v. Madrid*, 592 U.S. 306 (2021); *Carpenter v. United States*, 585 U.S. 296 (2018); *Riley v. California*, 573 U.S. 373 (2014); see also *Davis v. United States*, 564 U.S. 229 (2011); *Utah v. Strieff*, 579 U.S. 232 (2016). But the Warrant Clause’s oath requirement has yet to receive the same treatment.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted on April 16, 2026,

ANYA BIDWELL  
*Counsel of Record*  
PATRICK JAICOMO  
PAUL SHERMAN  
INSTITUTE FOR JUSTICE  
901 N. Glebe Rd., Ste. 900  
Arlington, VA 22203  
(703) 682-9320  
abidwell@ij.org

*Counsel for Petitioner*