No. 25-1205

In the Supreme Court of the United States

MICHAEL MENDENHALL,

Petitioner,

v.

CITY & COUNTY OF DENVER,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Should this Court overrule *Jones v. United States*, 362 U.S. 257 (1960) and hold that the Fourth Amendment prohibits courts from issuing warrants based on hearsay?

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INTRODUCTION

This case presents a straightforward application of settled Fourth Amendment law. Consistent with *Jones v. United States*, 362 U.S. 257 (1960), the Tenth Circuit held that reliable hearsay may establish probable cause for a warrant. Petitioner now asks this Court to abandon *Jones* and require firsthand, sworn testimony to establish probable cause. The Constitution and settled warrant practice foreclose this request.

Petitioner identifies no compelling reason to revisit *Jones*. The decision below does not conflict with this Court's precedent or create a circuit split. For over half a century, every circuit to consider this issue has followed *Jones*, and the Tenth Circuit simply adhered to that rule. The ordinary application of settled precedent does not warrant this Court's review.

The Constitution also does not support Petitioner's bright-line approach. The Fourth Amendment's text requires only that warrants issue upon probable cause "supported by Oath or affirmation . . . ." U.S. Const, amend. IV. It does not require firsthand knowledge. Elsewhere, the Constitution uses the same phrase only to impose a solemn legal obligation on the person making the oath. It likewise distinguishes between the preliminary determination of probable cause and evidentiary rules governing criminal trials. Petitioner's proposed rule departs from this design. It assigns "Oath or affirmation" a meaning carried nowhere else in the Constitution and imports trial-type evidentiary requirements into the warrant process.

Petitioner's policy arguments fare no better. For more than sixty years, *Jones* has provided a workable warrant application framework that encourages law enforcement officers to seek judicial authorization and allows judges to independently determine if probable cause exists. Petitioner points to examples of false affidavits and material omissions in warrants as proof of systemic failure. But the cited examples describe alleged abuses of the warrant process, not a flaw in *Jones*. Existing Fourth Amendment doctrine already provides remedies for those violations. Alleged officer misconduct therefore provides no basis for revisiting *Jones*. The Petition should be denied.

STATEMENT OF THE CASE

Petitioner threatened someone with a baseball bat outside of his home. The victim called 911, police officers responded, detained Petitioner, and began investigating the incident. During the investigation, one officer told a detective what the victim had reported. Using that information, the detective prepared a sworn affidavit and applied for a warrant to search Petitioner's home. A judge reviewed the affidavit, found probable cause, and issued the warrant. Officers then searched Petitioner's home, found the bat, and seized it.

Petitioner later sued Denver, alleging the City violated his Fourth Amendment rights because the detective obtained the search warrant based on hearsay rather than firsthand observations. The District Court dismissed his complaint because Petitioner's claim was foreclosed by this Court's decision in *Jones v. United States*, 362 U.S. 257 (1960). Pet.App.8a-17a.

The Tenth Circuit affirmed. It likewise held that *Jones* permits law enforcement to rely on hearsay statements when preparing an affidavit in support of a search warrant. Pet.App.la-7a.

REASONS FOR DENYING THE PETITION

Petitioner now asks a single legal question: does the Fourth Amendment require firsthand knowledge to establish probable cause for a search warrant? The answer is no.

I. PETITIONER OFFERS NO COMPELLING REASON TO OVERRULE *JONES*

Under this Court's explicit precedent, reliable hearsay may establish probable cause. So, here, the detective's decision to credit another witness's account did not render the search warrant unconstitutional.

Petitioner's argument, therefore, turns not on whether the Tenth Circuit correctly applied *Jones v. United States*, 362 U.S. 257 (1960), but whether this Court should abandon *Jones* altogether. He offers no reasoned basis for doing so. He identifies no circuit split, no conflicting authority, and no "compelling reasons" to disturb settled Fourth Amendment law. U.S. Sup. Ct. R. 10. Nor does he identify any intervening development that undermines *Jones*. Instead, he asks this Court to discard its well-settled warrant framework based on his disagreement with this Court's constitutional interpretation. This is not enough to warrant certiorari.

II. THE FOURTH AMENDMENT'S TEXT FORECLOSES PETITIONER'S PROPOSED BRIGHT-LINE RULE

Petitioner asks the Court to overturn *Jones* and impose a firsthand knowledge requirement for probable cause based on his misinterpretation of the phrase "oath or affirmation." Neither the ordinary meaning of "oath or affirmation" nor the Constitution's own use of the phrase supports Petitioner's reading.

A. The Warrant Clause Does Not Require Firsthand Knowledge

Petitioner's argument that police officers may only rely on firsthand information cannot be reconciled with the Fourth Amendment's text. The Warrant Clause imposes no such requirement:

> 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 (emphasis added).

The Warrant Clause identifies three constitutional prerequisites for issuing a warrant: probable cause, an oath or affirmation, and particularity. Nothing more. Petitioner, nevertheless, asks this Court to add a new, firsthand knowledge requirement into the text.

But courts interpret and enforce constitutional text according to its terms, not by supplying additional requirements. *Caminetti v. United States*, 242 U.S. 470, 485 (1917) ("Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion") (citing *Hamilton v. Rathbone*, 175 U.S. 414, 421 (1899)).

The ordinary meanings of "oath" and "affirmation" provide guidance. Founding-era dictionaries consistently defined oaths and affirmations as solemn declarations or promises that carry legal or moral consequences. For example, the 1755 edition of Samuel Johnson's dictionary defined "affirm" as "[t]o declare; to tell confidently[,]" and "oath" as "[a]n affirmation, negation, or promise, corroborated by the attestation of the Divine Being." 1 Samuel Johnson, *A Dictionary of the English Language* (1st ed. 1755). Similarly, the 1828 edition of Noah Webster's dictionary defined "affirmation" as "[a] solemn declaration made under the penalties of perjury," and "oath" as "[a] solemn affirmation or declaration, made with an appeal to God for the truth of what is affirmed." North American Dictionary of the English Language (1828). These definitions all focus on the same principle: the affiant swears to their belief of the truth of the information presented and faces punishment for falsehoods.

The Constitution's own use of the phrase "oath or affirmation" further confirms this understanding. The Framers used this identical phrase three other times: in Article I, requiring Senators to sit "on Oath or Affirmation" when trying impeachments, U.S. Const., Art. I, § 3, cl. 6; in Article II, requiring the President to take an "Oath or Affirmation" before assuming office, U.S. Const., Art. II, § 1, cl. 8; and in Article VI, requiring federal and state officers to be "bound by Oath or Affirmation" to support the Constitution, U.S. Const., Art. VI, cl. 3. In each instance, the phrase serves the same function. It binds the speaker to a solemn legal obligation. It does not limit who may take the oath to those with firsthand knowledge. There is no reason to read the identical language differently in the Fourth Amendment.

The Constitution's structure points to the same conclusion. When the Framers wanted to require witnesses to appear and testify, they said so. The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const, amend. VI. The Fourth Amendment contains no comparable requirement. And for good reason. The Constitution imposes different evidentiary requirements for criminal investigations, grand jury proceedings, and criminal convictions. Petitioner's bright-line rule would collapse this distinction and import the Sixth Amendment's witness requirement into the Fourth Amendment's warrant process.

B. Historical Practice Does Not Alter the Fourth Amendment's Text

Confronted with the plain text of the Constitution, Petitioner urges a different conclusion by resorting to historical practice. But those sources cannot bridge the textual gap. According to him, because oaths were backed by the penalties of perjury, the Constitution necessarily required the facts establishing probable cause to be sworn to by a witness with firsthand knowledge. In other words, Petitioner argues that because lying under oath was punishable by perjury, the Constitution requires probable-cause facts to be sworn to by someone who directly observed them. He also argues that pre-*Jones* federal practice uniformly rejected hearsay in warrant applications, thereby making *Jones* an unjustified departure from the Fourth Amendment's original meaning.

Petitioner's argument is untenable. It conflates *what* an oath guarantees with *who* may make an oath. As discussed, historically, an oath and affirmation certified only that the affiant was telling the truth in a sworn statement, not that the information came from firsthand observation. That remains true today. *See Oath*, *Black's Law Dictionary* (12th ed. 2024) (defining "oath" as a "solemn declaration that one's statement is true or that one will be bound to a promise"); *Affirmation, Black's Law Dictionary* (12th ed. 2024) (defining "affirmation" as a "solemn pledge equivalent to an oath but without reference to a supreme being or to swearing").

Petitioner's historical authorities confirm this same understanding. They merely explain that the purpose of an oath or affirmation is to ensure the "advancement of truth and right[.]" 3 Edward Coke, *Institutes of the Laws of England* 165 (1644). But that says nothing about whether the Fourth Amendment requires firsthand knowledge. And, of course, the Warrant Clause imposes no such requirement.

Even accepting Petitioner's account of pre-*Jones* practice, it does not answer the question before this

Court. The question is not whether certain courts previously adopted a particular practice, but whether the Fourth Amendment itself requires it. Indeed, this Court has long distinguished constitutional requirements from judicial or state-developed rules of practice. *See, e.g.*, *Virginia v. Moore*, 553 U.S. 164, 171 (2008) ("Our decisions counsel against changing this calculus when a State chooses to protect privacy beyond the level that the Fourth Amendment requires."). *Jones* reflects that same principle.

III. PETITIONER'S PROPOSED BRIGHT-LINE RULE WOULD UPEND THE WARRANT PROCESS

The bright-line rule would modify the warrant process in a way the Fourth Amendment neither requires nor contemplates. Doing so would upend settled warrant practice, blur the distinction between probable cause and trial proof, and complicate warrant applications without advancing Fourth Amendment protections.

A. *Jones* Reflects the Practical Realities of Criminal Investigations

For decades, the *Jones* framework has reflected a basic feature of criminal investigations: they are collaborative. As this Court has long recognized, officers routinely rely on one another's observations when seeking warrants. *United States v. Ventresca*, 380 U.S. 102, 111 (1965). That same principle underlies the fellow-officer rule, which allows officers working together to rely on one another's knowledge in establishing probable cause. *See United States v. Hensley*, 469

U.S. 221, 231 (1985) (holding "effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another.") (citation omitted); *Felders v. Malcom*, 755 F.3d 870, 881 (10th Cir. 2014) ("Our cases allow officers as part of a common investigation to pool their collective knowledge in establishing probable cause.").

The need for that approach has only grown as investigations increasingly depend on "supportive information from multiple sources, including other officers and agents, documents, forensic examinations, expert analysis, witnesses, victims, and the affiant's training and experience." Michelle M. Heldmyer, *Affidavit Writing Made Easy: Create an Outstanding Warrant Application Every Time*, Fed. L. Enf't Training Ctr., https://www.fletc.gov/sites/default/files/affidavit_writing_made_easy.pdf (last accessed July 1, 2026).

The current framework encourages officers to seek judicial approval before searching while allowing judges to assess probable cause in a "commonsense and realistic fashion." *Ventresca*, 380 U.S. at 108; *see also Illinois v. Gates*, 462 U.S. 213, 241 (1983) ("Our decisions applying the totality-of-the-circumstances analysis outlined above have consistently recognized the value of corroboration of details of an informant's tip by independent police work.").

B. The Bright-line Rule Would Replace Practical Judgment with Procedural Formality

Under the proposed rule, rather than promptly presenting investigation results to a judge, officers would first have to determine which firsthand witnesses are constitutionally required and round them up before seeking judicial review.

That burden would not fall on law enforcement alone. Victims, eyewitnesses, and informants (who may be unavailable or unwilling to participate) would become indispensable to the warrant process. For instance, in a routine domestic violence investigation, a victim may call 911 reporting that her partner assaulted her with a firearm and returned home with it. A responding officer may interview the victim, observe visible injuries, and relay that information to the detective preparing the warrant affidavit.

Under *Jones*, the detective may include the relayed information in a sworn affidavit, leaving the judge to decide whether the circumstances as a whole establish probable cause. But Petitioner's approach would instead require officers to secure sworn testimony from the victim before even seeking judicial authorization. These additional hurdles would delay judicial review precisely when speed may matter most: cases involving ongoing risks to victims, officers, and the public.

Judges, in turn, could no longer immediately evaluate probable cause under the totality of the circumstances. Instead, they would first have to resolve threshold questions about who personally observed each fact and whether additional witnesses must appear before the court. The additional litigation would burden courts and increase costs for taxpayers. The result would be to transform the practical, nontechnical probable cause inquiry into a show cause or evidentiary hearing. *See Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (describing probable cause as a "nontechnical conception that deals with the factual and practical considerations of everyday life") (quotation omitted); *Brinegar v. United States*, 338 U.S. 160, 176 (1949) (noting that "probable cause is a practical, nontechnical conception" and "[r]equiring more would unduly hamper law enforcement").

C. The Bright-line Rule Cannot Be Administered Consistently

Petitioner's proposed rule also fails to provide a workable standard. Many investigations do not begin with a single witness. A burglary discovered after the fact, a fraud uncovered through financial records, or a cybercrime reconstructed from electronic evidence may establish probable cause even though no one personally observed the crime.

The rule becomes even harder to apply when probable cause depends on information from multiple sources. Must every firsthand observer appear before the judge? Or only those supplying essential facts? And if only some, which ones? The Fourth Amendment does not ask courts to sort through those questions. *See Florida v. Harris*, 568 U.S. 237, 244 (2013) (noting that for probable cause the Court has "rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach").

D. The Fourth Amendment Does Not Import Trial Procedures into the Warrant Process

This Court's Fourth Amendment cases have consistently recognized that probable cause is a practical, preliminary determination, not a trial on the merits. Because a warrant authorizes a search and a trial determines guilt, the two proceedings require different showings. At the warrant stage, the question is simply whether the sworn facts establish probable cause—not whether the prosecution has assembled trial-ready proof. As this Court explained in *Draper*, a petitioner "goes much too far" by "confusing and disregarding the difference between what is required to prove guilt in a criminal case and what is required to show probable cause for arrest or search." *Draper v. United States*, 358 U.S. 307, 311 (1959) *overruled on other grounds by United States v. Chadwick*, 433 U.S. 1, 8 (1977).

Petitioner's proposed rule would shatter the nature of probable cause. It would import trial-like requirements into the investigative stage, blurring the distinction between establishing probable cause and proving guilt beyond a reasonable doubt. This Court has repeatedly rejected that approach. In *Gates*, the Court explained that "[f]inely-tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence, useful in formal trials, have no place in the magistrate's decision." *Gates*, 462 U.S. at 235. And in *Gerstein*, the Court declined to constitutionalize trial-type procedures at the probable cause stage, explaining that, unlike a criminal trial where guilt must be established through the "full panoply" of evidentiary and procedural safeguards, the sole question at the warrant stage is whether there is probable cause to proceed. *Gerstein v. Pugh*, 420 U.S. 103, 119–21 (1975). For that reason, the Court held that probable cause "can be determined reliably without an adversary hearing" and emphasized that probable cause rests on "the factual and practical considerations of everyday life[,]" not technical evidentiary rules. *Id.* at 120–21.

Indeed, even criminal trials do not categorically exclude hearsay. Courts have long recognized exceptions permitting reliable hearsay. Petitioner's rule would impose a more rigorous evidentiary rule at the warrant stage than at trial.

IV. THE BRIGHT-LINE RULE WOULD UNDERMINE THE WARRANT PROCESS

Petitioner has not shown that *Jones* created problems that his proposed rule would solve. The Petition and amici briefs point to instances of error, not defects in *Jones* itself. More importantly, Petitioner offers no reason to believe the bright-line rule would meaningfully improve the reliability of warrant applications. Instead, it would complicate the warrant process, discourage officers from seeking judicial authorization, and displace a settled framework that already includes safeguards against the misconduct Petitioner identifies.

A. Petitioner Real-World Examples Show No Defects in *Jones*

Petitioner's proposal does not address the problem he identifies. The Petition and amici briefs largely rely on cases involving false or misleading warrant applications, omissions of material information, and other alleged constitutional violations. These cases are undeniably tragic, but they are not consequences of *Jones*. Taylor, for example, involved the alleged fabrication of evidence. Young involved the alleged failure to investigate and corroborate an informant's claims. Neither depended on a judge's ability to consider reliable hearsay, and neither would have been prevented by requiring firsthand testimony from every source.

Moreover, firsthand testimony would not improve the reliability of the information presented. An officer willing to submit a false affidavit could still lie about his own observations. Likewise, an officer who failed to investigate, corroborate available information, or disclose material facts could do the same. At most, the bright-line rule might make it more difficult for an officer to falsely attribute a statement to another witness. But the oath already provides accountability. The affiant swears to the truth of the affidavit under the penalty of perjury. Allegations that some officers violated constitutional protections do not justify abandoning precedent that neither authorizes nor causes those violations.

Even more troubling, this rule would discourage the very judicial oversight the Fourth Amendment favors. Faced with greater procedural obstacles to obtain a warrant, officers would have a greater incentive to rely on warrant exceptions, thereby reducing the use of warrants altogether.

B. Existing Safeguards Already Protect Against Unreliable Hearsay

In any case, existing Fourth Amendment doctrine already protects against the examples Petitioner identifies. Under *Franks*, a warrant obtained through deliberate or reckless falsehoods must be invalidated. *Franks v. Delaware*, 438 U.S. 154, 155 (1978). Under *Leon*, courts can suppress evidence if they were "misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth[.]" *United States v. Leon*, 468 U.S. 897, 898 (1984). This Court has also made clear that officers are accountable for deficient warrant applications. Qualified immunity is unavailable when "the warrant was 'based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable[.]'" *Messerschmidt v. Millender*, 565 U.S. 535, 547 (2012) (quoting *Leon*, 468 U.S. at 923); *see also Groh v. Ramirez*, 540 U.S. 551, 563 (2004) ("It is incumbent on the officer executing a search warrant to ensure the search is lawfully authorized and lawfully conducted.").

Petitioner's argument that judicial review in the warrant process has been reduced to a ministerial exercise does not change the analysis. He mistakes an efficient warrant process for a perfunctory one. Judges routinely evaluate warrant applications under a familiar constitutional standard, and the ability to do so efficiently does not make their review perfunctory.

Modern warrant practice also includes legal review by prosecutors long before an application reaches a court. *See* Nat. Dist. Attys. Ass'n, *National Prosecution Standards* (3d ed. 2009), Standard 3-2.1 ("The prosecutor's office should develop and maintain a system for providing law enforcement with the opportunity for a prompt legal review of search and arrest warrant applications before the applications are submitted to a judicial officer."); Am. Bar Ass'n, *ABA Standards for Criminal Justice: Prosecutorial Investigations* § 2.8 (d) (3d ed. 2014) (same). That review helps identify legal deficiencies and ensures judges receive affidavits that have already undergone meaningful legal scrutiny.

Petitioner's proposal finds no support in the Fourth Amendment's text, this Court's precedent, or the practical operation of the warrant process. It would replace a settled and workable constitutional framework with a categorical firsthand knowledge requirement that the Constitution nowhere imposes and that would do little to remedy the concerns Petitioner identifies.

V. THIS CASE IS A POOR VEHICLE

Even if this Court overruled *Jones*, Petitioner would still not prevail. Petitioner sued Denver under 42 U.S.C. § 1983, which requires him to prove Denver enacted a policy with deliberate indifference, meaning Denver adopted the policy because it intended to violate individual rights. *Accord Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 400, 404–05, 410, 411 (1997); *City of Okla. City v. Tuttle*, 471 U.S. 808, 824 (1985). And though municipalities may be liable for facially unconstitutional policies, *Brown*, 520 U.S. at 405, Denver's policy simply followed this Court's holding in *Jones*, which expressly permits officers to use reliable hearsay in seeking a warrant—a holding this Court has since approved of four separate times. *Illinois v. Gates*, 462 U.S. 213, 238 (1983), *Franks v. Delaware*, 438 U.S. 154, 165 (1978), *United States v. Harris*, 403 U.S. 573, 581 (1971), *Aguilar v. Texas*, 378 U.S. 108, 114 (1964). A municipality does not intend to violate federal law by conforming its conduct to binding precedent. Thus, even if this Court were to overrule *Jones* today, Petitioner could not establish municipal liability against Denver. This case is a poor vehicle.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted,

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