NO. 25-_____

In the Supreme Court of the United States

MAMADOU DIAW,

Petitioner,

v.

STATE OF OHIO,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Ohio

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, after *Carpenter v. United States*, 585 U.S. 296 (2018), the Fourth Amendment permits law enforcement to obtain a single historical location data point associated with a user account on a third-party marketplace application—without a warrant—via a prosecutor's subpoena issued under state statute.

2. Whether the "third-party doctrine" from *Smith v. Maryland*, 442 U.S. 735 (1979), and *United States v. Miller*, 425 U.S. 435 (1976), extends to historical app-location data where the government seeks targeted historical coordinates for investigative use, rather than business records reflecting non-locational account activity.

PARTIES TO THE PROCEEDINGS

Petitioner

- MAMADOU DIAW, Defendant-Appellee in the Court of Appeals of Ohio

Respondent

- STATE OF OHIO, Plaintiff-Appellant in the Court of Appeals of Ohio

CORPORATE DISCLOSURE STATEMENT

Petitioner is a natural person. No corporate disclosure is required.

LIST OF PROCEEDINGS

Supreme Court of Ohio

No. 2025-Ohio-2323

State of Ohio, *Appellee*, v. Diaw, *Appellant*.

Slip Opinion: July 2, 2025

Court of Appeals of Ohio, 10th Appellate District

No. 22AP-614

State of Ohio, *Plaintiff-Appellant* v.
Mamadou Diaw, *Defendant-Appellee*.

Decision: June 11, 2024

Court of Common Pleas, Franklin County, Ohio

No. 21CR-379

State of Ohio, *Plaintiff* v.
Mamadou Diaw, *Defendant*.

Suppression Order: October 3, 2022

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OPINIONS BELOW

The opinion of the Supreme Court of Ohio is reported at 2025-Ohio-2323 (decided July 2, 2025) (App.1a–14a, 15a). The opinion of the Tenth District Court of Appeals (Franklin County) is reported at 2024-Ohio-2237 (App.16a–53a). The trial court's suppression order is unreported (App.53a–64a).

JURISDICTION

The Supreme Court of Ohio entered judgment on July 2, 2025. (App.15a). This Court's jurisdiction rests on 28 U.S.C. § 1257(a). The state court resolved Petitioner's federal Fourth Amendment challenge and *affirmed while remanding* for further proceedings. Petitioner invokes the *Cox Broadcasting* practical-finality doctrine because the federal question was conclusively resolved and further proceedings will not alter that federal determination. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 477–87 (1975). The petition is timely filed within Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. IV

> 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.

Ohio Rev. Code Ann. § 2935.23
Witnesses in felony investigations.

> After a felony has been committed, and before any arrest has been made, the prosecuting attorney of the county, or any judge or magistrate, may cause subpoenas to issue, returnable before any court or magistrate, for any person to give information concerning such felony. The subpoenas shall require the witness to appear forthwith. Before such witness is required to give any information, he must be informed of the purpose of the inquiry, and that he is required to tell the truth concerning the same. He shall then be sworn and be examined under oath by the prosecuting attorney, or the court or magistrate, subject to the constitutional rights of the witness. Such examination shall be taken in writing in any form, and shall be filed with the court or magistrate taking the testimony. Witness fees shall be paid to such persons as in other cases.

STATEMENT OF THE CASE

1. The Investigation and the Single Data Point

Police investigated a robbery facilitated through a *Letgo* marketplace listing. Without a warrant, they issued a prosecutor's subpoena under R.C. 2935.23 to the app provider seeking information tied to a suspected user. The provider returned, among limited account records, one historical latitude/longitude coordinate time-stamped to when the user allegedly posted or interacted with the listing. There was no multi-day tracking, no cell-site dump, and no "tower-to-tower" movement pattern—just one historical point that officers later used to link the account to Petitioner.

2. Suppression, Appeal, and the Decision Below

The trial court suppressed the evidence, concluding that obtaining even a single historical location point from an app without a warrant implicated *Carpenter*. The appellate court reversed. The Ohio Supreme Court affirmed the reversal, holding that because only a single point was obtained and it was "voluntarily conveyed" to a third-party app, no reasonable expectation of privacy attached and the third-party doctrine applies. *See State v. Diaw*, 2025-Ohio-2323 (Ohio) (App.1a–14a, 15a).

3. Why this Matters Now

This case cleanly presents the question *Carpenter* left open: how the Fourth Amendment treats targeted historical app-location—not month-long CSLI, not real-time pinging, not bulk geofence returns. States and lower courts are dividing on whether the government may subpoena any historical location coordinate from

an app provider without a warrant so long as it is "only one" point, or whether *Carpenter*'s reasoning protects sensitive historical location data regardless of quantity.

REASONS FOR GRANTING THE PETITION

I. Courts are Dividing on Whether a Single Historical Location Point from an App is Categorically Unprotected Under the Third-Party Doctrine

Post-*Carpenter* decisions reflect competing approaches to app-based location information. Some courts treat any historical coordinate obtained from a provider as covered by *Carpenter*'s privacy rationale because even one point can reveal constitutionally sensitive facts (*e.g.*, presence at a home, church, clinic). Others, like the decision below, hold that the third-party doctrine controls unless the government compiles long-term tracking akin to CSLI. The resulting doctrinal drift leaves officers, providers, and millions of app users without clear guidance.

This petition is an ideal vehicle: the record is uncluttered (one coordinate; a narrow subpoena; no exigency claim), and the state high court's reasoning squarely adopts a quantity-driven rule—one point okay, many points maybe not—that invites evasion of *Carpenter* by slicing historical location data into bite-size subpoenas.

II. *Carpenter's* Logic Protects Historical Location Information Because of its Nature, Not Merely its Duration

Carpenter held that individuals have a reasonable expectation of privacy in historical location data because it "provides an intimate window into a person's life." 585 U.S. at 313. That logic does not turn on an arithmetic threshold. A single coordinate can be intensely revealing when time-stamped to a home at night, a workplace, a medical clinic, a house of worship, or a meeting with counsel. Permitting warrantless acquisition of "just one" coordinate—especially targeted to a critical moment—creates a blueprint for end-runs around the Fourth Amendment: officers need only issue a series of subpoenas for isolated points at critical times.

The decision below elevates *Smith/Miller* over *Carpenter* by re-characterizing historical location as ordinary business data "voluntarily" conveyed. But *Carpenter* rejected that framing for location data precisely because people do not meaningfully "volunteer" the locational exhaust of modern services. *Id.* at 314–16. The same is true for commerce-platform apps whose functionality incidentally logs location.

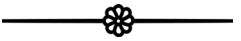
III. The Question is Important and Recurring as Law Enforcement Increasingly Seeks Targeted App-Location Via Subpoena

Marketplaces and social platforms routinely log historical coordinates. Prosecutors are now using targeted, single-point subpoenas in fraud, theft, and violent-crime investigations. Providers receive thousands of such demands annually. A bright-line "one-point-is-fine" rule effectively collapses *Carpenter* whenever the government structures requests to avoid dura-

tion. Only this Court can supply a workable standard consistent with modern digital realities.

IV. This Case is a Clean Vehicle Under § 1257(a) and *Cox*

The Ohio Supreme Court definitively resolved the federal Fourth Amendment question adverse to Petitioner and remanded for proceedings that are not expected to revisit that constitutional ruling. Further trial-level steps will merely apply the ruling to the remaining evidence. That is the textbook *Cox* scenario where delaying review would risk irremediable consequences: the location data will shape admissibility and trial strategy, and forcing Petitioner to undergo trial to later seek review would frustrate the Fourth Amendment right he asserted. *See Cox*, 420 U.S. at 477–87.



CONCLUSION

For the reasons stated above, the Court should grant this petition for writ of certiorari.

Respectfully submitted,

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