No. 25-484

IN THE
Supreme Court of the United States

AARON RAYSHAN WELLS,
Petitioner,
v.

STATE OF TEXAS,
Respondent.

On Petition for a Writ of Certiorari to the Texas Court of Criminal Appeals

BRIEF OF FORMER MAGISTRATE JUDGE ANDREW AUSTIN AS *AMICUS CURIAE* IN SUPPORT OF GRANTING THE PETITION

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INTEREST OF *AMICUS CURIAE*[1]

Amicus former Magistrate Judge Andrew Austin served on the U.S. District Court for the Western District of Texas from 1999 to 2021. In that capacity, he ruled on thousands of applications for search warrants, many of which sought to obtain digital data from third parties—including applications for geofence warrants. He therefore experienced firsthand the difficulties that magistrate judges face daily applying Fourth Amendment principles to geofence warrants and to requests for digital data more broadly.

Since leaving the bench, *amicus* has served as an adjunct professor at the University of Texas School of Law, where he teaches a course called *The Fourth Amendment and Digital Data*.

Amicus takes no position on how the Court should decide this case but urges that the Court decide it. Magistrate judges, who review geofence warrants every day, need clarity on whether and how the Fourth Amendment applies to those warrants. This case gives the Court the opportunity to solve this discrete, recurring, and intractably fractured constitutional issue.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus* or his counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2(a), counsel for *amicus* also represent that all parties were provided notice of *amicus*'s intention to file this brief at least 10 days before it was due.

INTRODUCTION AND SUMMARY OF ARGUMENT

Every day, magistrate judges around the country receive dozens of applications for geofence warrants. These warrants require technology companies to provide information on every device present in a defined area during a set time frame. Law enforcement typically uses them when they know roughly when and where a crime occurred but cannot identify a suspect.

These geofence warrants pose significant constitutional questions: Are geofence warrants unconstitutional general warrants? Do individuals have a reasonable expectation of privacy in the location data held by technology companies? If so, is that reasonable expectation absolute, or does it depend on the scope of the requested geofence? What does it mean to give digital data to technology companies willingly? And many more.

Every day, magistrate judges around the country struggle with these questions. They have little to guide them, and what little they have is riddled with conflicts and contradictions. The stakes, meanwhile, are high. Geofence warrants are an increasingly prevalent tool for law enforcement, and they impact thousands of Americans. Wrong answers either unfairly hamper law enforcement efforts or violate the Fourth Amendment rights of untold numbers of persons.

The Court should grant certiorari to give magistrate judges the guidance they need to answer these important questions and protect Fourth Amendment rights.

I. Magistrate judges need clear guidance on how to apply the Fourth Amendment to applications for geofence warrants. As the officials who consider and

issue warrants, magistrate judges are the final safeguards for preventing unconstitutional searches. Yet many state-level magistrate judges are not lawyers, and all magistrate judges considering warrant applications must rule quickly and largely without the benefit of legal briefing, relying instead on their own knowledge of the law. Only with clear Fourth Amendment standards can magistrate judges reliably do so.

II. Magistrate judges currently have nowhere to turn for the clear guidance they need.

Magistrate judges cannot find the answers they need in this Court's precedents. This Court has never considered geofence warrants before and has explicitly left unanswered key questions about how the third-party doctrine applies when individuals opt in to provide data to technology companies.

Nor can magistrate judges turn to the lower courts for help. An intractable circuit split exists between the Fifth and Fourth Circuits. The Fifth Circuit says geofence warrants are always unconstitutional, and the Fourth Circuit says they do not even constitute searches. Meanwhile, the Eleventh Circuit and the Georgia Supreme Court have found that some but not all geofence warrants are constitutional. The Texas Court of Criminal Appeals' decision below only entrenched this divide, creating a jurisdictional split within the Fifth Circuit at the federal and state levels.

Legislation and legal scholarship likewise provide no answers. Legislatures have been largely silent on the question of geofence warrants. And scholars are as divided as the courts.

III. Only this Court can provide magistrate judges the guidance they need, and the timing is right to do so. The five appellate courts implicated in this split have generated more than 15 opinions between them,

so further percolation is unlikely either to unify them or to generate new ideas. And legislatures and scholars lack authority to say what the Fourth Amendment requires. The time has therefore come for this Court to provide further direction to the magistrate judges who are the first and—in the vast majority of cases—the last line of defense of the public's Fourth Amendment rights.

ARGUMENT

I. MAGISTRATE JUDGES NEED GUIDANCE ON THE FOURTH AMENDMENT'S APPLICATION TO GEOFENCE WARRANTS

A. Magistrate Judges Are The Last Line Of Defense Against Unconstitutional Searches

The Fourth Amendment protects the people "against unreasonable searches." U.S. Const. amend. IV. It does so by requiring the government to obtain a warrant before conducting a search and to justify that warrant by showing "probable cause" and by "particularly describing the place to be searched, and the . . . things to be seized." *Id.* Magistrate judges are tasked with determining whether the government has satisfied those constitutional standards and, if so, issuing the warrant.[2] *See Shadwick*, 407 U.S. at 348-50.

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[2] For simplicity, *amicus* will use the term "magistrate judge" to describe all officers who consider warrant applications at all levels of government. At the state level, many officials who are not judges review warrant applications. *See*, *e.g.*, Va. Code § 19.2-33 (creating the "office of magistrate"); *id.* § 19.2-45(2) (empowering "[a] magistrate . . . [t]o issue search warrants"). By contrast, federal magistrate judges are appointed judicial officers. *See* 28 U.S.C. § 631(a) (creating the office of "United States magistrate judges"); Federal Courts Study Committee Implementation Act of 1990, Pub. L. No. 101-650, tit. III, § 321, 104

The life cycle of a warrant proceeds in two basic steps that culminate with the magistrate judge. *First*, a law enforcement officer or government attorney submits an application for a warrant, accompanied by affidavits or other sworn testimony in support. *See* Fed. R. Crim. P. 41(d).[3] This application is often made in writing but may be made orally, even over the telephone. *See* Fed. R. Crim. P. 4.1, 41(d)(3). *Second*, the magistrate judge evaluates the application for probable cause and particularity based only on the sworn testimony before him. *See* Fed. R. Crim. P. 41(a)(1), (d). If the warrant satisfies those constitutional prerequisites, then the magistrate judge issues it. Only then can law enforcement execute the warrant and conduct a search. In other words, the magistrate judge is the last line of defense for preventing unconstitutional searches before they happen.

Post-search judicial review of the warrant cannot substitute for a magistrate judge's adequate pre-search review. As an initial matter, most warrants are never reviewed by a higher court. Such review occasionally occurs through motions to suppress or, more rarely, through motions for the return of seized property under Federal Rule of Criminal Procedure 41(g). *Amicus* estimates that higher courts reviewed

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Stat. 5089, 5104, 5117 ("After the enactment of this Act, each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge[.]"). These titular differences, however, are legally irrelevant. *See Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("The substance of the Constitution's warrant requirements does not turn on the labeling of the issuing party.").

[3] *See also* Peter G. McCabe, *A Guide to the Federal Magistrate Judges System* 23-24 (updated Oct. 2016) ("*Magistrate Judges System Guide*"), https://perma.cc/U9SD-KUMY.

far fewer than 10% of the warrants he issued in his career.

Reviewing warrants for digital data in the possession of third parties is especially rare. In such cases, the target of the search may never know that the search—assuming it is a search within the meaning of the Fourth Amendment—ever occurred, making review even less likely.

Geofence warrants are particularly likely to evade review. As petitioner explains, *see* Pet. 5-6, the government has no specific suspect at the outset. It only hopes that the geofence location data will reveal a suspect. If the geofence location data does not reveal one, however, then an untold number of people will have been subject to a search (again, assuming it is a search) of which they may never know. The nature of geofence warrants therefore often leaves no one to challenge the search to vindicate Fourth Amendment rights.

Statistics bear this out. Magistrate judges have issued tens of thousands—likely hundreds of thousands—of geofence warrants.[4] Yet, as of the date of this filing, a search for "(geofence /p warrant) OR ('reverse location' /p warrant)" across all jurisdictions returns just 92 cases in Westlaw.

Even in the rare case that a higher court reviews an erroneously issued geofence warrant, the good-faith exception to the exclusionary rule makes it unlikely that the target of the unlawful search will receive any relief. Under that exception, courts will not exclude

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[4] Google alone responded to more than 20,000 geofence warrants from 2018-2020. *See* Google, *Supplemental Information on Geofence Warrants in the United States* ("*Google Supplemental Information*"), https://perma.cc/9S8C-8ZFQ (last visited Nov. 17, 2025).

"evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant" because "a warrant issued by a magistrate normally suffices to establish that a law enforcement officer has acted in good faith in conducting the search." *United States v. Leon*, 468 U.S. 897, 922 (1984) (internal quotation marks omitted). Thus, when a magistrate judge issues a warrant, evidence derived from the resulting search is often admissible even if the magistrate judge issued the warrant erroneously and the search violated the Fourth Amendment. *See*, *e.g.*, *United States v. Smith*, 110 F.4th 817, 840 (5th Cir. 2024) (applying good-faith exception even after finding geofence warrants *per se* unconstitutional), *cert. denied*, No. 24-7237 (U.S. Nov. 10, 2025).

In sum, erroneously issued geofence warrants potentially impacting the Fourth Amendment rights of thousands of Americans are highly likely to evade judicial review. The adequacy of magistrate judges' pre-search review of geofence warrants is therefore critically important.

B. To Prevent Unlawful Searches, Magistrate Judges Need Clear Fourth Amendment Standards

This Court should provide much-needed constitutional guidance for magistrate judges' pre-search review. Without clear legal standards, magistrate judges cannot adequately protect Fourth Amendment rights.

First, the exigencies and time pressure that accompany warrant applications—often requiring magistrate judges to make on-the-fly assessments—necessitate clear legal rules. In 2024 alone, 569[5]

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[5] *See* Admin. Off. of the U.S. Courts, *Status of Magistrate Judge Positions and Appointments—Judicial Business 2024*,

active, full- and part-time federal magistrate judges collectively ruled on more than 208,000 warrant applications.[6] That amounts to about one warrant application per magistrate judge per day, in addition to their many other duties. Indeed, "magistrate judges disposed of 1,349,904 matters" in 2024, of which less than one-sixth were warrant applications.[7] Magistrate judges simply do not have very much time in which to review warrant applications. One study found "that the median time for review is only three minutes, and that one out of every ten warrants is opened, reviewed, and approved in sixty seconds or less."[8] Clear legal standards are thus necessary in light of the time-sensitive reality of warrant applications.

Second, clear rules are needed because magistrate judges considering warrant applications typically receive no briefing on the law and must rely on their own pre-existing knowledge. Warrant applications by law enforcement contain only factual assertions, not explanations of legal standards. The warrant application here is illustrative: it describes the persons, things, or places to be searched, *see* App. 107a-109a,

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https://perma.cc/7FN3-55ZA (last visited Nov. 17, 2025); *Report of the Proceedings of the Judicial Conference of the United States* 14 (Mar. 11, 2025) (noting receipt of "569 annual reports from magistrate judges" as of December 13, 2024), https://perma.cc/BZ3N-2DBL.

[6] *See* Admin. Off. of the U.S. Courts, *U.S. Magistrate Judges—Judicial Business 2024*, https://perma.cc/7EWD-ALJT (last visited Nov. 17, 2025).

[7] *See id.* (observing that "magistrate judges disposed of 1,349,904 matters" in 2024, of which just 208,366 were "search warrant applications," and 1,349,904 / 208,366 = 6.48).

[8] Miguel F.P. de Figueiredo, Brett Hashimoto & Dane Thorley, *Unwarranted Warrants? An Empirical Analysis of Judicial Review in Search and Seizure*, 138 Harv. L. Rev. 1959, 1960 (2025).

and recites facts that purport to establish probable cause, *see* App. 112a-114a. It is not a legal brief—it contains no section on the applicable legal standards for geofence warrants, let alone the nuances of the existing circuit split.

Magistrate judges likewise receive no legal briefing from the target of the warrant. Magistrate judges consider all warrant applications *ex parte*. *See Magistrate Judges System Guide* at 23. So the target of the warrant could provide no briefing or argument even if it wanted to.

Third, clear standards are necessary because magistrate judges' qualifications vary widely across jurisdictions, with many States not requiring that magistrate judges be lawyers or even have gone to law school. Virginia, for example, requires only that magistrate judges "have a bachelor's degree," Va. Code § 19.2-37(B), and not have "a criminal conviction for a felony," *id.* § 19.2-35. *See also id.* § 19.2-45(2) (power to issue search warrants). Alaska requires only that a magistrate judge be a citizen of the United States, at least 21 years old, and a resident of Alaska for at least six months. *See* Alaska Stat. § 22.15.160(b); *see also id.* § 22.15.100(4) (power to issue search warrants).

Fourth Amendment standards must therefore be sufficiently clear for non-lawyer magistrate judges to apply them quickly and consistently. This is especially so because state, not federal, magistrate judges issue most geofence warrants. *See Google Supplemental Information* at 2. And while federal magistrate judges must be experienced lawyers in good standing,[9] even magistrate judges (and judges on

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[9] *See* Admin. Off. of the U.S. Courts, *The Selection, Appointment, And Reappointment Of United States Magistrate Judges*

higher courts) with law degrees and legal experience have struggled to apply Fourth Amendment principles to applications for geofence warrants. *See infra* Part II.B.

C. Magistrate Judges Face An Exponentially Increasing Number Of Applications For Geofence Warrants

Geofence warrants are a powerful investigatory innovation that have quickly become a favorite tool of law enforcement. "The government filed its first geofence search warrant in 2016." Brian L. Owsley, *The Best Offense Is a Good Defense: Fourth Amendment Implications of Geofence Warrants*, 50 Hofstra L. Rev. 829, 834 (2022). Since then, their use has become ubiquitous.

Google's experience with geofence warrants is illustrative. In 2018, Google received 982 geofence warrants. *See Google Supplemental Information*. By 2019, that number increased to 8,396. *See id.* And, in 2020, that number ballooned to 11,554, amounting to more than 30 per day and "constituting more than 25% of all warrants [Google] receive[s] in the United States." *Id.* at 1.

Given the ever-increasing prevalence and importance of geofence warrants, magistrate judges need to know whether those warrants implicate the Fourth Amendment and, if so, how.

9-10 (2010) (an applicant "must be . . . a member in good standing of the bar of the highest court" of a jurisdiction and "have actively practiced law for at least five years"), https://perma.cc/5YYT-VLYC.

II. NO SOURCE CURRENTLY GIVES MAGISTRATE JUDGES THE GUIDANCE THEY NEED

A. This Court's Precedents Offer Little Guidance

This Court's precedents do not provide the clarity magistrate judges need to evaluate applications for geofence warrants (or other warrants for digital data held by third parties) quickly and consistently.

The Court's only decision applying the Fourth Amendment in the context of digital location data held by a third party, *Carpenter v. United States*, 585 U.S. 296 (2018), is seven years old. In *Carpenter*, the Court held that "[t]he Government's acquisition of" seven days' worth of "cell-site records . . . was a search under [the Fourth] Amendment," and so "the Government will generally need a warrant to access" that data. *Id.* at 319-20. In doing so, the Court revisited what had until then been a widely accepted and easily applied understanding—"individuals have no Fourth Amendment interests in" information "possessed, owned, and controlled by a third party." *Id.* at 321 (Kennedy, J., dissenting) (citing *United States v. Miller*, 425 U.S. 435 (1976); *Smith v. Maryland*, 442 U.S. 735 (1979)).

Having held that the third-party doctrine is not absolute in the digital era, the Court provided little forward-looking guidance on how to evaluate warrants—like geofence warrants—seeking data in the possession of third parties. Indeed, the opinion provides little guidance by design: The Court emphasized that its decision was "a narrow one" limited to the specific technology at issue (cell-site location information) so as not to "embarrass the future." *Id.* at 316 (majority). "[A] warrant is required in the rare case where the suspect has a legitimate privacy interest

in records held by a third party." *Id.* at 319. And to identify those rare cases, the Court established a procedure by which courts must, for every "qualitatively different category of" information, assess anew whether a reasonable expectation of privacy exists based on the "depth, breadth, and comprehensive reach" of the information sought, as well as the "nature of its collection." *Id.* at 309, 320.

Applying that test to geofence warrants has bedeviled magistrate (and other) judges ever since. Is the geolocation data that such warrants seek "qualitatively different" from cell-site location information? Does the precision of geolocation data make requests for such data comprehensive? Or does that precision make the requests narrow? Does it matter that the recipients of geofence warrants typically ask their customers for permission to store location data? Does it matter that a geofence warrant begins with no specific suspect in mind, while a warrant for cell-site location information does? Judges have found no clear answers in *Carpenter*.

Again, *amicus* takes no position on how the Court should answer these questions but urges the Court to answer them. *Amicus* also respectfully submits that *Carpenter's* dissenting Justices' predictions have unfortunately come true in one regard: *Carpenter* has "cause[d] confusion" and kept "judges guessing." *Id.* at 333, 340-41 (Kennedy, J., dissenting); *see infra* Part II.B. The Court should grant certiorari to dispel that confusion.

B. Lower Courts Are Hopelessly Divided

Magistrate judges also cannot find the clarity they require to assess geofence warrants in the lower courts. As the petition ably describes, circuit courts and state supreme courts are deeply divided on the

constitutional implications of geofence warrants. Indeed, some have aptly called this area of law "the Grand Canyon of circuit splits."[10]

On one side of the chasm, the Fifth Circuit has held that geofence warrants (1) do result in searches and (2) are *per se* unconstitutional general warrants, meaning that no amount of probable cause can ever justify issuing them. *See Smith*, 110 F.4th at 836-38. On the other side, a majority of the judges on the Fourth Circuit has opined that geofence warrants (1) do *not* result in searches, and therefore, (2) law enforcement does not even need probable cause or a warrant to request geofence location data. *See United States v. Chatrie*, 136 F.4th 100, 100 (4th Cir. 2025) (en banc) (per curiam) (summarily affirming district court's application of the good-faith exception to the motion to suppress), *pet. for cert. pending*, No. 25-112 (U.S.). Put simply, the Fifth Circuit holds that all geofence warrants are unconstitutional, while the Fourth Circuit holds that geofence warrants have no constitutional implications at all.[11]

The law is similarly muddled elsewhere. The Eleventh Circuit, the Georgia Supreme Court, and the Texas Court of Criminal Appeals have tried to

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[10] Project for Privacy & Surveillance Accountability, *Geofence Warrants and the Grand Canyon of Circuit Splits* (Aug. 20, 2024), https://perma.cc/NG78-5GHD.

[11] While these decisions provide crystal clarity to magistrate judges in their respective circuits, that clarity does not exist in other circuits. In addition, the clarity in the Fourth and Fifth Circuits comes at an unacceptable cost: either the Fifth Circuit has wrongfully denied federal law enforcement the ability to use a powerful tool to protect the tens of millions of Americans living in its jurisdiction, or the Fourth Circuit has wrongfully denied fundamental Fourth Amendment protections to the tens of millions of Americans living in its jurisdiction.

sail between the extremes by holding that geofence warrants are not always unconstitutional, but that they could be in some situations. The Eleventh Circuit reasoned that a "geofence warrant" that "captured only information within one hundred meters of specific locations for fifteen to forty minutes" simply "doesn't implicate . . . Fourth Amendment concerns." *United States v. Davis*, 109 F.4th 1320, 1330 (11th Cir. 2024), *pet. for cert. pending*, No. 25-5189 (U.S.). But it left open the possibility that geofence warrants, if they cover sufficiently large or nonpublic areas and timespans, could raise constitutional concerns. *See id.*

The Georgia Supreme Court similarly rejected arguments that geofence warrants are *per se* unconstitutional, holding instead that the particular warrant before it satisfied the Fourth Amendment's probable cause and particularity requirements. It too left open the possibility that a geofence warrant "not reasonably calculated to lead . . . to the device held by the unknown suspect or that suspect's identity" would be unconstitutional as "overly broad." *Jones v. State*, 913 S.E.2d 700, 710 (Ga. 2025).

The Texas Court of Criminal Appeals likewise declined to find that geofence warrants are *per se* unconstitutional, instead holding that the geofence warrant before it "supplied ample probable cause" and "provided sufficient particularity." App. 19a, 23a. A hodgepodge of concurring and dissenting opinions followed, which petitioner has carefully parsed for the Court. *See* Pet. 17-19. At base, defendants in Texas state courts face a different Fourth Amendment standard than defendants in Texas federal courts face with similar geofence warrants. *See* App. 11a-12a. Put simply, the courts (and even the individual judges on the courts) are deeply divided. *See* Appendix (table summarizing conflicting decisions and opinions).

This deep divide provides no meaningful guidance to lower courts and magistrate judges. Lower courts continue to reach a wide variety of conclusions. Some have found geofence warrants to be *per se* unconstitutional general warrants. *See*, *e.g.*, *United States v. Fuentes*, 2024 WL 5494054, at *10 (Sept. 3, 2024), *report and recommendation adopted*, 2025 WL 484628 (Feb. 13, 2025), *recon. denied*, 2025 WL 1042177 (E.D. Okla. Apr. 8, 2025). Others have found "that geofence warrants may be constitutional depending on the circumstances" and that courts should "analyze geofence warrants on a case-by-case basis to ensure they satisfy constitutional requirements." *State v. Contreras-Sanchez*, 5 N.W.3d 151, 163-64 (Minn. Ct. App. 2024); *see also*, *e.g.*, *United States v. McCracken*, 2025 WL 3034953, at *6-10 (E.D. Pa. Oct. 30, 2025).

These persistent disagreements evince the point: lower courts are too divided to provide meaningful guidance to magistrate judges not directly bound by a precedential ruling.

C. Legislation Offers Little Guidance

Magistrate judges cannot look to legislation for guidance either. Congress and state legislatures have largely failed to keep pace with changing technology. No federal statute (and only one state statute) exists specifically governing the issuance of geofence warrants.

The leading federal statute concerning third-party data storage is the Electronic Communications Privacy Act ("ECPA"). Congress passed the ECPA in 1986—3 years before Tim Berners-Lee invented the World Wide Web in 1989,[12] 12 years before Google

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[12] *See* CERN, *The birth of the Web*, https://perma.cc/NG82-HHB6 (last visited Nov. 17, 2025).

was incorporated in 1998,[13] 21 years before Apple released the first iPhone in 2007,[14] and a full 30 years before the government sought the first geofence search warrant in 2016.[15] It is therefore unsurprising that the ECPA does not specifically address the procedures the government must follow to obtain geofence warrants.

Congress has not updated the ECPA to reflect advances in technology over the past four decades. And although Congress has provided minor revisions to the ECPA over the years, including as part of the Communications Assistance for Law Enforcement Act (1994) and the USA PATRIOT Act (2001), those revisions—themselves decades old at this point—do not squarely address geofence warrants.

State legislatures likewise have provided little meaningful guidance, much less guidance that magistrate judges throughout the country can use. Although an estimated 95% or more of geofence warrants are approved by state magistrate judges,[16] just a handful of States have passed laws governing the need for warrants to access location data. The few that have—Maine,[17] Minnesota,[18] Montana,[19]

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[13] *See* Google, *From the garage to the Googleplex*, https://perma.cc/9UZW-2EHQ (last visited Nov. 17, 2025).

[14] *See* Apple, *Apple Reinvents the Phone with iPhone* (Jan. 9, 2007), https://perma.cc/E5JQ-EH9L.

[15] *See* Owsley, 50 Hofstra L. Rev. at 834.

[16] *See Google Supplemental Information* at 2 (showing that all "Federal Jurisdictions" accounted for approximately 4-5% of geofence warrants issued to Google each year from 2018-2020).

[17] *See* Me. Rev. Stat. tit. 16, § 648.

[18] *See* Minn. Stat. § 626A.42(2).

[19] *See* Mont. Code § 46-5-110.

New Hampshire,[20] Rhode Island,[21] Utah,[22] and Vermont[23]—are notably among the least frequent issuers of geofence warrants to begin with. *See Google Supplemental Information*. And only one of those States, Utah, has a law specific to geofence warrants.[24] These exceptions prove the rule: legislation concerning geofence warrants is rare, and what little legislation exists is unhelpful to most magistrate judges considering applications for geofence warrants.

D. Scholars Are As Divided As The Courts

While legal scholarship is not law, scholarship can provide guidance to courts. Unfortunately, legal scholars are as divided as the courts on the question of geofence warrants. Some have argued, consistent with Fourth Circuit law, "that a warrant is not required" at all for "geofence queries." Reed Sawyers, *For Geofences: An Originalist Approach to the Fourth Amendment*, 29 Geo. Mason L. Rev. 787, 826 (2022). Others have argued, consistent with Fifth Circuit law, that "geofence warrants are general warrants and should be unconstitutional per se." Note, *Geofence Warrants and the Fourth Amendment*, 134 Harv. L. Rev. 2508, 2511, 2515-20 (2021); *see also* Haley Amster & Brett Diehl, Note, *Against Geofences*, 74 Stan. L. Rev. 385, 393 (2022) ("[G]eofence warrants are unconstitutional general warrants because of the discretion given to law-enforcement officers in warrant execution."). Still others simply note "that geofences *may* be searches" requiring further Fourth

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[20] *See* N.H. Rev. Stat. § 644-A:2.

[21] *See* 12 R.I. Gen. Laws § 32-2.

[22] *See* Utah Code §§ 77-23c-102, 77-23f-102.

[23] *See* Vt. Stat. tit. 13, §§ 8101(8), 8102.

[24] *See* Utah Code § 77-23f-102.

Amendment scrutiny, even if "most geofences will not be searches" (at least in that author's view). Jordan Wallace-Wolf, *Unfenced: The Fourth Circuit Gives Geofencing Its First Appellate Go-Ahead in* United States v. Chatrie, 82 Wash. & Lee L. Rev. Online 1, 8-9 (2024) (emphasis added).

In sum, this Court should grant review because judicial precedent, legislation, and scholarship alike provide no meaningful source of guidance for magistrate judges.

III. ONLY THIS COURT CAN PROVIDE THE GUIDANCE MAGISTRATE JUDGES NEED

A. Permitting Further Percolation Is Futile

This Court often allows difficult issues to "percolate" in the lower courts before weighing in. But it should not "wait to decide" a constitutional question where "further percolation is of little value." *Snope v. Brown*, 145 S. Ct. 1534, 1538 (2025) (Thomas, J., dissenting from the denial of certiorari). Here, percolation is of no value.

As explained *supra* Part II.B, every idea that can be aired has been aired. The variety and breadth of thoughtful opinions analyzing the Fourth Amendment implications of geofence warrants leave the Court well-positioned to analyze the questions presented. Further percolation will not break new ground or add incremental value.

Nor will further percolation allow the circuit split here to resolve itself. The split is clear, with the Fourth and Fifth Circuits at each end of the spectrum; the Eleventh Circuit, the Georgia Supreme Court, and the Texas Court of Criminal Appeals in the middle; and several courts at the federal and state levels generating multiple concurring opinions and separate writings. *See supra* Part II.B. No reason exists to

think that, with more time, courts around the country will coalesce around a majority position. Quite the opposite, to borrow from Judge Newell's opinion below, there is "an obvious and insurmountable deadlock," and the lower courts "simply can't do any better." App. 100a-101a (Newell, J., concurring in denial of rehearing).

B. Legislatures Cannot Provide The Needed Guidance

This Court should not wait for Congress or state legislatures to come to the rescue for two reasons.

First, no reason exists to believe that Congress or state legislatures will pass laws governing geofence warrants any time soon. "Congress has not indicated a willingness to regulate law enforcement's access to geofence data." Amster & Diehl, 74 Stan. L. Rev. at 438. Indeed, a recent report by the Congressional Research Service analyzing the current state of the law surrounding geofence warrants suggests that, although "Congress could amend the [Stored Communications Act] to affect protections for location history information," Congress may instead "leave resolution of the legality of geofence warrants to the courts." Peter G. Berris & Clay Wild, Cong. Rsch. Serv., *Geofence Warrants: A Circuit Split on Application of the Fourth Amendment* 5 (Feb. 27, 2025) ("Berris & Wild, *Geofence Warrants*").

States likewise have not indicated a widespread willingness to regulate law enforcement's access to geofence data. Utah alone has a law on the books specifically governing geofence warrants. *See supra* Part II.C. A group of New York legislators has been trying without success for the past five years to pass legislation that would ban law enforcement from using geofence searches entirely. *See* Amster & Diehl,

74 Stan. L. Rev. at 439 (discussing failed efforts in 2020); S.B. S404, 2025-2026 Legis. Reg. Sess. (N.Y. Jan. 8, 2025) (the most recent iteration of that effort). *Amicus* is aware of no other State even attempting to pass such a law governing geofence warrants.

Second, even if Congress and the States were inclined to pass laws governing geofence warrants, those laws may not answer the fundamental Fourth Amendment questions that magistrate judges need answered. Congress and the States could "exceed [their] authority in instructing the courts on how to interpret the Fourth Amendment" in this context. Berris & Wild, *Geofence Warrants* at 4. That is because there is a "constitutional floor below which Fourth Amendment rights may not descend," *Carpenter*, 585 U.S. at 403 (Gorsuch, J., dissenting), and the political branches do not always regulate consistent with that floor.

Carpenter itself illustrates the point. The Stored Communications Act provided standards and procedures that Congress deemed sufficient to govern access to and use of cell-site location information from third parties. The *Carpenter* majority, however, determined that those standards and procedures fell below the Fourth Amendment floor, finding that a search occurred and that that search was unlawful *despite* having complied with the statutory requirements Congress dictated. *Id.* at 316-18 (majority). Here, that same risk exists, particularly where the currently muddled judicial precedent is unlikely to offer legislators clear guideposts.

For this reason, this Court should not wait for legislatures to act.

C. This Court Must Provide The Needed Guidance

Because neither lower courts nor legislatures can provide the clarity magistrate judges need to safeguard Fourth Amendment protections, only this Court can provide much-needed guidance. On the one hand, geofence warrants provide "law enforcement a powerful new tool to carry out its important responsibilities." *Carpenter*, 585 U.S. at 320. On the other, geofence warrants threaten to expose detailed location data for untold numbers of innocent persons to the government. In Texas alone, more than 31 million people now live under a regime in which their constitutional rights change based on which courthouse they enter.

Magistrate judges should not be left to balance these interests on an ad hoc basis without clear guideposts. Indeed, this Court has recognized as much: "[T]he Court is obligated—as subtler and more far-reaching means of invading privacy have become available to the Government—to ensure that the progress of science does not erode Fourth Amendment protections." *Id.* (cleaned up).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

The following tables summarize the diverse positions that courts (and individual judges within those courts) have taken on the question presented here:

***Wells v. State* (TX)**	
Opinion	**Summary**
Majority	• Assuming without deciding that search occurred, warrant supported by probable cause
Finley, J., concurring	• Geofence is not a search • Data is voluntarily shared
Newell, J., concurring	• Not a search at Step One or Step Two • Search at Step Three
***State v. Jones* (GA)**	
Opinion	**Summary**
Majority	• Assuming without deciding that search occurred, warrant satisfied particularity requirement
***United States v. Smith* (5th Cir.)**	
Opinion	**Summary**
Majority	• Geofence is a search • Geofence warrants are *per se* unconstitutional general warrants
***United States v. Davis* (11th Cir.)**	
Opinion	**Summary**
Majority	• Geofence warrants do not implicate Fourth Amendment privacy concerns, at least when limited in time and area and to public spaces

***United States v. Chatrie* (4th Cir.)**	
Opinion	**Summary**
Diaz, C.J., concurring	• Without addressing the constitutional question, good-faith exception applies
Wilkinson, J., concurring	• Geofence is not a search • Data is voluntarily shared • Categorical bar is not appropriate
Niemeyer, J., concurring	• Geofence is not a search • Data is like fingerprints, voluntarily left behind
King, J., concurring	• Geofence is not a search • Good-faith exception applies
Wynn, J., concurring in judgment	• Geofence is a search • Third-party doctrine is not appropriate given the data requested
Richardson, J., concurring	• Geofence is not a search • Data was voluntarily disclosed
Heytens, J., concurring	• Good-faith exception applies because geofence landscape is too ambiguous to blame officers
Berner, J., concurring	• Geofence is a search when non-anonymous location history data is collected • Step One is not categorically overbroad • Steps Two and Three are searches
Gregory, J., dissenting	• Geofence is a search • Good-faith exception applies