No. 25-484

IN THE

Supreme Court of the United States

AARON RAYSHAN WELLS,

Petitioner,

v.

TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Location History is a service Google account holders may choose to use to keep track of places they have visited. For cell-phone users to take advantage of Location History, they must opt in to the service in their Google account settings. Location History supports a feature called *Timeline*, which combines and contextualizes the Location History data so that users can see their own movements and places they have visited in Google Maps. Users can toggle Location History on or off as necessary on a device-by-device basis. Users can review, edit, or delete their Location History data at will via their Timeline. Back when Google stored Location History data on its servers (rather than on user devices as it does now), law enforcement could obtain Location History data from Google using a geofence warrant. Geofence warrants allowed law enforcement to obtain from Google the account identifying information for devices that generated Location History data at a crime scene at the time the offense was committed.

This case presents two questions:

1. Does Google's disclosure of two hours and twenty-five minutes' worth of Location History data to law enforcement in response to a geofence warrant violate the Fourth Amendment?

2. Does the exclusionary rule apply to geofence-warrant-derived Location History data?

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STATEMENT OF THE CASE

I. The Capital Murder

At around 3:00 a.m. on a Sunday morning, Jimmy Giddings arrived home. Pet. App. 2a, 24a n.15. His girlfriend met him in the driveway. *Id.* A masked robbery crew organized by Petitioner emerged from the darkness and ambushed them. (SX.188 (joined cameras)). The assailants shot Giddings's girlfriend five times in the front yard and pursued Giddings into the house. Pet. App. 3a. After one of the men escorted Giddings's girlfriend into the house at gunpoint, she heard Giddings say, "This all I got little bro," and "Don't shoot me bro." (8RR.57–58). The assailants shot and killed him. (8RR.58; SX.1, 5). Police arrived within a couple of minutes, but Petitioner's crew was already gone. (8RR.36, 61; SX.188 (joined cameras)).

Giddings's house had a multi-channel surveillance system with night vision, which captured video of the events outside the house. (SX.188 (joined cameras)). The surveillance footage showed three men dash across the street and ambush the couple, and a fourth man jog across the street about forty seconds later, after the shooting had started. *Id.* Giddings's cameras also captured the four men running back across the street together after the murder. *Id.* Surveillance footage from the church across the street confirmed that the crew had staged in the church parking lot before the offense and had escaped to a vehicle in the parking lot afterward. Pet. App. 3a; (SX.202).

The homicide detective assigned to the case released stills from the surveillance footage and received a "large amount of tips," but the masked assailants remained unidentified. (10RR.133, 143). The case began to go cold. *Id.*

II. Location History

Location History is a service available to Google account holders for keeping track of locations they have visited. (SX.P7; SX.B at 11). For a cell-phone users to take advantage of Google's Location History, they must opt in to the service in their Google account settings. (SX.P7; SX.B at 3). Location History supports a feature called *Timeline*, which combines and contextualizes the Location History data so that users can see their movements and places they have visited. (SX.B at 7, 12). Opting in to Location History also allows users to experience personalized maps or recommendations, get help finding their phones, and receive real-time traffic updates about their commutes. (SX.P7; SX.B at 12). Users can toggle Location History on or off as necessary on a device-by-device basis. (SX.P7). Users can review, edit, or delete their Location History data at will via their Timeline. (SX.P7; SX.B at 5, 15).

About one-third of active Google users had Location History enabled on their accounts as of 2019. (SX.B at 14). Google users who have opted in to Location History may see personalized advertisements based on the places they've visited. *Id.* Google can use anonymized and aggregated location information to help advertisers determine the effectiveness of online advertising campaigns, but Google does not share "identified" Location History data with third parties except through legal process. *Id.* at 14–15.

Location History is separate from another opt-in Google service called Web & App Activity, which has both device-level and app-level permissions. *Id.* at 15. Web & App Activity logs activities (such as Google searches) users undertake on enabled devices while logged into

their accounts. *Id.* at 15. This data can sometimes include information about a user's location, but that information does not contribute to the data points Google calculates and stores as the user's Location History. *Id.* at 15–16.

In contrast to Web & App Activity, Location History calculates and logs a user's location regardless of whether the device is in use, as long as the user (1) has opted in to Location History at the account level, (2) carries with them a device on which they are logged into their Google account, and (3) has enabled both location reporting for that device in their Google account and the device-location setting on the device. *Id.* at 13.

III. The Geofence Warrant

The homicide detective obtained Petitioner's name and Gmail address with a geofence warrant executed on Google. (18RR.209–219 (SX.P1); CR.103–113). This type of warrant allows an officer to draw a *geofence*, i.e., a geometric perimeter around a particular geographic location, and obtain Location History information from Google for the purpose of identifying devices present at the location. (17RR.259 (SX.B)).[1]

At the time of trial, the detective was a 22-year veteran of the Dallas Police Department with five years' experience investigating homicides. (10RR.22). He had nine years of detective experience before being assigned to the homicide unit, during which he investigated robberies,

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[1.] State's Exhibits A and B are bookmarked as defense exhibits in the reporter's record. They start at (17RR.231) and (17RR.255), respectively.

property crimes, and kidnappings. (10RR.120). In the geofence warrant application, the detective detailed the known events surrounding the capital murder, including that surveillance footage had captured the four assailants gathering in and escaping from the church parking lot, and confronting the victims in front of their home. Pet. App. 112a–113a.

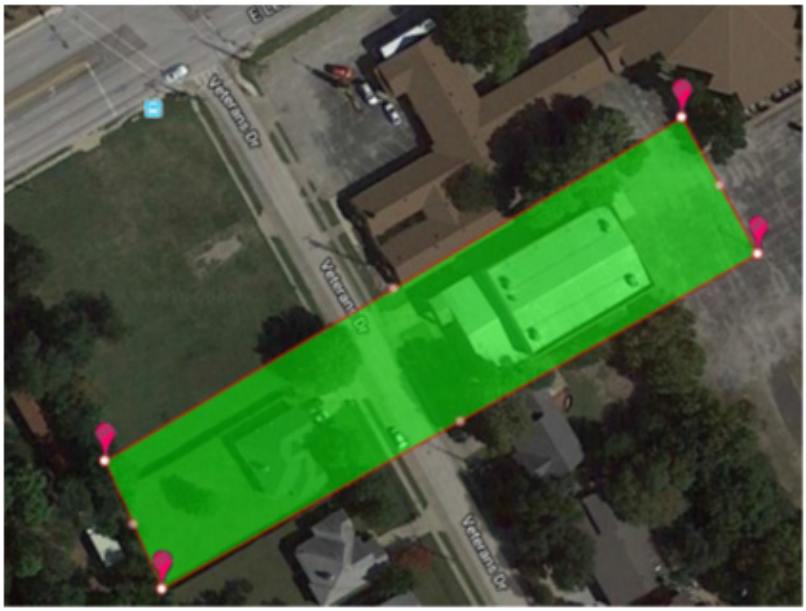
In addition to this information, the detective described his knowledge of cellular phones and his understanding of Google location services. Pet. App. 111a–112a. He averred that nearly every cellular phone using an Android operating system has an associated Google account, and Android users are prompted to add a Google account when they first power on a new Android device. *Id.* 111a. Based on his training and experience, the detective asserted that Google collects and retains location data from both Android and non-Android users who have a Google account with location services enabled on their devices, and that detailed location information is captured and recorded "even when the user is not doing any specific action on the device." *Id.* 111a–112a, 114a. The affidavit also asserted that this location data can "assist investigators in understanding a fuller geographic picture and timeline, which may tend to identify potential witnesses, as well as possibly inculpating or exculpating account owners." *Id.* 112a. Finally, the detective noted that, in his training and experience, cell-phone use is typical during home-invasion robberies of this sort:

> It is likely that at least one of the four suspects who committed this offense had an Android device on him during the commission of this offense. It is common practice that home invasion robbery suspects keep an open line

> with someone outside of the residence while committing this type of offense to keep an eye out for responding police officers.

Id. 113a.

Knowing from surveillance video that the robbers had come and gone from the parking lot behind church buildings across the street from Giddings's house, the detective drew a rectangular geofence around the house, the church building, and part of the parking lot behind it. (CR.103). Knowing that the robbery had occurred around 3:00 a.m., he applied for a warrant for location data generated within the geofence between 2:45 a.m. and 3:10 a.m. (18RR.209 (SX.P1)).



(SX.236 at 29 (house left, church complex right)).

A state district judge issued the warrant. *Id.* 106a. The warrant ordered Google to furnish the detective with "location history data" from the location and time he had specified in the application, and it included the picture of the geofence laid over the Google map of the location. *Id.* 103a. The warrant also incorporated the detective's affidavit by reference. *Id.* 102a.

The warrant specified that Google was to identify devices located within the geofence during the twenty-five-minute time frame when the capital murder was committed. *Id.* 103a. Google was to give the devices anonymized numerical identifiers. *Id.* 104a. Law enforcement would then review the data to identify any devices that may have been present at the location and time necessary for the user to witness or commit the offense. *Id.* For devices of interest, Google was to provide Location History data for up to sixty additional minutes before and after the specified twenty-five-minute period, including locations outside the geofence. *Id.* 104a–105a. This would help identify any outlier data points that, when viewed in the context of the surrounding data, did not indicate that the device was present in the geofenced area. *Id.* 105a. Once those devices were eliminated, law enforcement was to request the identifying information for the remaining suspect account(s), which Google would provide. *Id.* 105a.

Google identified just three phones located within the geofence during the twenty-five minutes specified in the warrant. (10RR.145). After Google expanded the parameter by sixty minutes in both directions (for a maximum window of two hours and twenty-five minutes), Petitioner's device "was determined to belong to a suspect who clearly had involvement in this offense." (SX.291 at

9). The detective requested identifying information for all three of the devices, and Google provided the detective with the accounts' subscriber information. (SX.237, 323, 324, 325). This included the subscriber's name, list of Google services, email address, recovery email address, IP address, and phone number. (SX.237, 323, 324, 325). The detective searched for Petitioner's name in Dallas County records and found a picture of Petitioner, whose appearance matched the general description of the straggling fourth robber. (10RR.146).

IV. The Subsequent Warrants

The detective then obtained separate warrants for all of Petitioner's user data from Google and his call-detail records (including cell-site location information or "CSLI") from T-Mobile. (10RR.146–47; 16RR.252; SX.290, 291, 297, 298). Petitioner's Google location data showed that he (or at least his phone) had visited the scene twice in advance of the murder and was with the crew when they murdered Giddings. (SX.253). Twenty days before the murder, Petitioner's phone had generated GPS data while circling Giddings's house. (10RR.89; SX.253 (June 3, 2018)). The GPS "hits" were a "firm indicator" that a mapping application was in use. (10RR.89–90). Before leaving Giddings's neighborhood, Petitioner's phone also generated GPS hits in the church parking lot. (10RR.90). The day before the murder at around the same time of the early morning, Petitioner's phone returned to Giddings's neighborhood. (SX.253(June 23)). His phone interacted with a WiFi router located in the church buildings. (10RR.77).

Armed with Petitioner's call-detail records, another detective searched social media for the people Petitioner had communicated with around the time of the offense. (7RR.85–88).

She identified the three other robbers by their tattoos and provided the homicide detective with their names and pictures. (7RR.96–103; SX.264–69). The homicide detective found them in Alabama, interviewed them, photographed their tattoos, and matched the tattoos to the surveillance stills. (10RR.153, 154–56). He then used search warrants to get their call-detail records from their cellular service providers and to extract the data from one of their phones. (10RR.153–54). The call-detail records for the three suspects confirmed that their phones had been present at the crime scene. (10RR.156).

Petitioner's Google location data and call-detail records also showed that his phone returned to his apartment each night. (10RR.71, 158). He spent the nights before and after the murder there. (10RR.158). One of the robbers would testify at trial that the robbery crew had met at this apartment complex before the murder to drink and do drugs. (10RR.71–72). Both the Google data and the T-Mobile call-detail records showed Petitioner's device at Giddings's house and the church across the street around the time of Giddings's murder. (10RR.86, 97–98; SX.318, 319, 320, 321).

V. The Pretrial Motion to Suppress and the Trial

Petitioner was charged with capital murder. Pet. App. 4a. At a hearing on a pretrial motion to suppress, Petitioner argued that the geofence warrant was "a general warrant and an illegal fishing expedition." (4RR.12). Petitioner claimed the warrant "contained neither probable cause, which would require a nexus, nor particularity of a person to be searched or an item to be seized." (4RR.13). The motion alleged that location data generally is "sensitive"

and capable of revealing "the privacies of life," and its disclosure to law enforcement was therefore a search under *Carpenter v. United States*, 585 U.S. 296 (2018). (CR.95–96).

Respondent countered that Petitioner had failed to establish a legitimate expectation of privacy in his Google Location History. (4RR.17–18). Even if accessing the Location History data was a Fourth Amendment search, the Respondent argued, the detective had probable cause to believe every device operating at the crime scene at the time of the murder belonged to either a suspect or a witness. (4RR.20). Respondent argued that the geofence warrant could not be a general one because it particularly identified the place to be searched and the thing to be seized. (CR.135–37).

The court denied the motion. (CR.185, 206). The trial court's findings included no findings regarding any expectation of privacy in Petitioner's Location History data. Pet. App. 92a–93a. Nor did the trial court address probable cause. *Id.* The trial court merely concluded that the warrant and warrant application had "sufficient particularity to be valid." *Id.* 93a.

Petitioner did not challenge the additional warrants for the whole of his Google data and his CSLI from T-Mobile. At trial, the jury heard from Giddings's girlfriend and watched the surveillance videos. (8RR.7; 9RR.38). The homicide detective testified to his investigation, including using the geofence warrant to identify Petitioner. (10RR.143–45). The jury also saw a presentation from a geolocation expert, who mapped the broader Google location data and CSLI obtained from the subsequent

warrants. (10RR.39–17). One of the robbers testified against Petitioner, and the location data for the crew matched his description of the crew's movements. (SX.253; 10RR.71–72, 75, 78, 81, 98, 158). The jury convicted Petitioner of capital murder. (12RR.4).

VI. The Appeals

On appeal, Petitioner disputed the geofence warrant's probable cause and particularity. Appellant's Br. at 45, *Wells v. State*, 675 S.W.3d 814 (Tex. App.—Dallas 2023) (05-21-00855-CR), https://search.txcourts.gov/Case.aspx?cn=05-21-00855-CR&coa=coa05. The court of appeals concluded that the warrant satisfied those Fourth Amendment requirements, and that the exclusionary rule would not apply anyway because the detective had acted in good-faith reliance on a warrant. Pet. App. 75a. The court of appeals did not address Respondent's argument that Petitioner had failed to establish a legitimate expectation of privacy in the trial court. *Id.*

The Texas Court of Criminal Appeals granted discretionary review to determine whether the court of appeals "correctly determined the legality of geofence warrants." *Id.* 2a n.2. The Court of Criminal Appeals failed to produce a majority opinion, in part because it was working shorthanded. Presiding Judge Schenck had heard the case in the intermediate court of appeals and did not participate. *Id.* 1a, 55a. Judge Newell would later opine that the Court of Criminal Appeals "should have dismissed the petition for discretionary review as improvidently granted and waited for a different case in which the entire Court could weigh in." *Id.* 98a (Newell, J., concurring in denial of reh'g). In addition, Judge McClure

dissented without opinion, leaving just seven judges whose opinions are known. *Id.* 1a.

Those seven judges produced three opinions. A four-judge plurality opinion assumed a legitimate expectation of privacy in Petitioner's Location History and concluded that the warrant here satisfied the probable cause and particularity requirements of the Fourth Amendment. *Id.* 26a (Yeary, J.). Two judges who joined the plurality opinion also believed that a warrant was unnecessary because Petitioner had no legitimate expectation of privacy in such limited location information voluntarily disclosed to a third party. *Id.* 27a–28a (Finley, J., concurring). A "concurring and dissenting" opinion garnered the final three votes. *Id.* 37a. (Newell, J., concurring & dissenting). Those three judges agreed that the limited location data provided in response to the geofence warrant did not invade a legitimate expectation of privacy, forming a five-judge majority holding that no warrant was required for that data. *Id.* 46a.

However, the three concurring-and-dissenting judges believed that the IP history requested at Step Three was not a history of IP addresses associated with the Google account, but rather "a record kept of websites visited or services accessed" on the phone. *Id.* 47a. The concurring-and-dissenting opinion recognized an expectation of privacy in such a record and concluded that the warrant application in this case did not provide probable cause. *Id.* 47a–54a. The opinion's probable-cause rationale relied on Texas precedent concerning cell-phone searches. *Id.* at 48–51 (analyzing the warrant under *State v. Baldwin*, 664 S.W.3d 122, 123 (Tex. Crim. App. 2022)).

REASONS TO DENY THE PETITION

This case involves an obsolete type of geofence warrant and a record that remains undeveloped on Petitioner's Fourth Amendment search claims. Google's 2023 decision to store Location History on user devices (rather than its own servers) has thwarted law enforcement's ability to use geofence warrants like the one in this case. Consequently, an opinion from this Court in this case would have limited prospective applications.

Meanwhile, a nationwide consensus has emerged favoring the constitutionality of geofence warrants. While Petitioner and the supporting amici point to the fractured decision below and the Fifth Circuit's departure from the consensus as reasons for review, differing factual assumptions—not legal disagreement—underlie the opinions' different answers to the threshold question of whether Google's response to a geofence warrant constitutes a Fourth Amendment search.

Moreover, this case is a poor vehicle for resolving the threshold search question. Petitioner developed no record of a subjective expectation of privacy in the data disclosed, did not claim any other interest protected by the Fourth Amendment, and did not contest subsequent warrants that secured the broader location data presented at trial. The record here simply does not lend itself to jurisprudential development. The petition should be denied.

I. A decision in this case has limited prospective applications because Google now stores Location History data on user devices rather than its servers, rendering Google geofence warrants obsolete.

Geofence search warrants were effective at identifying perpetrators of known offenses because they homed in on location data generated at the crime scene at the time of the offense. Google made geofence warrants possible by storing the Location History data from all users who had opted in to the service in one place—its servers—such that location data generated at a crime scene during an offense was likely to be found there. The place to be searched and the thing to be seized could be particularly described in the warrant: The place to be searched was Google's storage; the thing to be seized was the Location History data and account identifiers. But Google changed that while this case was pending on appeal.

While Petitioner was seeking discretionary review from the Texas Court of Criminal Appeals, Google announced that it would no longer be storing Location History data on its servers and would instead be storing that data on users' devices.[2] With the data stored on the devices rather than at Google, law enforcement would need to know whose device to search to access Location History data. Because geofence warrants were used when

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[2.] Marlo McGriff, *Updates to Location History and new controls coming soon to Maps* (Dec. 12, 2023), https://perma.cc/6CMJ-FMWM. This blog post announcing this decision can be found in the record of this case as an attachment to a letter Petitioner filed in the Court of Criminal Appeals. Google still gives users to the option to backup their locally stored Location History by saving an encrypted copy (which not even Google can read) to the cloud. *Id.*

the perpetrator's historical location was known, but his identity was not, this change effectively thwarted Google geofence warrants. As Petitioner candidly put it in his letter updating the Court of Criminal Appeals:

> Law enforcement will no longer be able to compel Google to search location history. There will be no more geofence warrants like the warrant at issue in Petitioner's case.

Letter dated Dec. 13, 2024, *Wells v. State*, 714 S.W.3d 614 (Tex. Crim. App. 2025) (No. PD-0669-23) (Dec. 14, 2023) https://search.txcourts.gov/Case.aspx?cn=PD-0669-23&coa=coscca.

Petitioner's predictions proved prescient. The warrant procedure followed in this case is obsolete. While Google does not separately break out geofence warrants in the transparency reports Petitioner cites (Pet. at 28 n.15), the reports show the total number of search warrants Google received had been steadily increasing through December of 2023.[3] After the announcement that Location History would be stored on users' devices rather than Google's servers, Google received 17,124 fewer search warrants in 2024 than it did in 2023—a decrease of nearly 25 percent.[4] The data simply contradicts the claim that geofence warrant usage is currently exploding,[5] or even

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[3] *Global Requests for User Information*, Google Transparency Report, https://transparencyreport.google.com/userdata/overview?hl=en (last visited Jan. 4 2026) (filtered to United States search warrant totals).

[4] *Id.*

[5] *Cf.* Br. of Amicus Curiae Project for Priv. & Surv. Accountability, Inc. Supporting Pet'r at 6.

that it is driving an increase in the number of total data requests of Google.

Petitioner's suggestion that this Court should review this case because it involves the most common type of geofence warrant (Pet. at 25–26) is also outdated. Even before Google transitioned Location History to local storage, the district court's opinion in *Chatrie* had been widely circulated. *See United States v. Chatrie*, 590 F.Supp.3d 901 (E.D. Va. 2022), *aff'd* 136 F.4th 100 (4th Cir. 2025) (en banc), *pet. for cert. pending*, No. 25-112 (filed July 28, 2025). The district judge in *Chatrie* took issue with the geofence warrant in that case because it did not require additional authorization between steps. *Id.* at 927. In response, law enforcement agencies (including those in Dallas County) shifted to multi-warrant processes for obtaining subscriber information, thus obtaining additional judicial authorization between steps.[6] So while Respondent will defend the single-warrant process used here if this Court grants review, an opinion focused on the necessity of additional judicial authorization between steps would have little practical effect—even on the few geofence warrants issued in the origin jurisdiction before Google changed its practices.

[6.] *See, e.g., Jones v. State,* 913 S.E.2d 700, 706 (Ga. 2025) (describing additional warrant obtained between Steps Two and Three); *State v. Contreras-Sanchez*, 5 N.W.3d 151, 159 (Minn. Ct. App. 2024), *review granted* (Minn. May 29, 2024) (same); *see also United States v. Smith*, 110 F.4th 817, 827–28 (5th Cir. 2024) (noting that the initial warrant required "further legal process" before requesting Step Two data, but investigators failed to apply for a second warrant).

II. Disagreements about facts, rather than law, produced the fractured decision below and the circuit split.

Courts around the country have reached a consensus that the geofence warrant procedure, when performed properly, satisfies the Fourth Amendment. Although the Texas Court of Criminal Appeals issued a fractured decision below and the Fifth Circuit's opinion in *United States v. Smith*, 110 F.4th 817 (5th Cir. 2024), *cert. denied*, No. 24-7237 (Nov. 10, 2025), caused a circuit split, factual disagreements underlie both of those events.

In the Court of Criminal Appeals, the disagreement between the judges arose from a mistaken belief that the six-month IP history requested for Petitioner's Google account was not a history of IP addresses used over the previous six months, but rather Petitioner's internet-browsing history. *Id.* at 47a (Newell, J., concurring & dissenting). Under this belief, three judges concluded that there is a legitimate expectation of privacy in such data. *Id.* Because these three judges thought that the third step of the warrant sought browsing data,[7] they would have held that the process became a Fourth Amendment search at Step Three. *Id.*

Despite this factual discrepancy regarding the IP-history aspect of the warrant, the Court of Criminal

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[7] "There is no suggestion in the record that police actually obtained [Petitioner's] IP history pursuant to this warrant." Pet. App. 6a n.4 (Yeary, J.). To the contrary, the subscriber information page Google provided for Petitioner at Step Three reads "No user IP logs data." (SX.305).

Appeals reached a consensus on the propriety of obtaining Location History information and identifying a suspect via a geofence warrant. Of the seven judges whose opinions are known, five judges agreed that the limited disclosure to law enforcement in this case was not a search, and two judges felt it was easier to say that the warrant in this case was supported by probable cause. Regarding a *Carpenter*-based expectation of privacy in the fruits of a geofence warrant, the Court was not fractured on the law—it just disagreed about the facts.[8]

The Court of Criminal Appeals' general agreement that there is no legitimate expectation of privacy in such limited location data accords with the original panel opinion in *United States v. Chatrie*, 107 F.4th 319 (4th Cir. 2024) *reheard en banc* 136 F.4th 100, *pet. for cert. pending*, No. 25-112 (filed July 28, 2025). And while two judges below preferred to resolve the matter by finding the warrant sufficient to satisfy the Fourth Amendment, that

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[8.] Admittedly, Judge Newell's concurring-and-dissenting opinion also departed from the plurality opinion on two legal grounds: (1) that an appellate court can resolve a question about the validity of a warrant without answering the threshold search question, and (2) that this warrant was supported by probable cause. Pet. App. at 38a–39a, 48a–54a. To the extent that Judge Newell's first point of disagreement is a federal question, it has been resolved against his position. *See Byrd v. United States*, 584 U.S. 395, 411 (2018) (permitting the Court of Appeals to address other aspects of the merits of a Fourth Amendment claim without addressing "standing"). His conclusion that the warrant was not supported by probable cause depended on his belief that Texas precedent requires a nexus between the device and the offense, rather than the thing to be seized (the location data) and the offense. Pet. App. at 48a–51a.

position aligns them with state courts around the country.[9] In short, courts nationwide have reached a consensus that the geofence warrant procedure satisfies the Fourth Amendment, although some courts find it easier to say there is no legitimate expectation of privacy in the limited location data disclosed, while others prefer to assume an expectation of privacy when the warrant clearly satisfies the Warrant Clause.

The outlier, of course, is *Smith*, the only appellate decision nationwide to hold geofence warrants unconstitutional. *See Smith*, 110 F.4th at 838. But even *Smith*'s departure from the consensus rests more on fact than law—at least on the expectation-of-privacy question. *Smith* relied on various opinions in *Chatrie* and law-review notes for a "primer" on how geofence warrants work and concluded that geofence warrants "at least as described" were unconstitutional. *Id.* at 820–26. Based on various sources outside the record before it, *Smith* assumed that "users are bombarded multiple times with requests to opt in across multiple apps," that those requests lack clarity, and that "manually deactivating all [Location History] sharing remains difficult and discouraged." *Id.* at 823, 835.

On those facts, *Smith* applied *Carpenter*'s involuntariness rationale rather than the third-party doctrine. *Id.* at 835–36. At the time, the Fifth Circuit opinion seemingly diverged from the Fourth Circuit panel

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[9] *See, e.g., Jones v. State,* 913 S.E.2d 700, 706 (Ga. 2025); *Tomanek v. State*, 314 A.3d 750, 761 (Md. 2024); *Commonwealth v. Choice*, 345 A.3d 719, 730 n.17, 741 (Pa. Super. Ct. 2025); *Price v. Superior Court of Riverside Cnty*, 310 Cal. Rptr. 3d 520, 541 & n.9 (Cal. Ct. App. 2023); *State v. Contreras-Sanchez*, 5 N.W.3d 151, 163 (Minn. Ct. App. 2024, review granted).

opinion in *Chatrie*, which concluded that Chatrie "did not have a reasonable expectation of privacy in two hours' worth of Location History data voluntarily exposed to Google." *Chatrie*, 107 F.4th at 325. But that conclusion turned on a completely different explanation of the opt-in process:

> Before a user can activate Location History, Google explains that 'Location History saves where you go with your devices,' that 'Google regularly obtains location data from your devices,' and that '[t]his data is saved even when you aren't using a specific Google service, like Google Maps or Google search.

Id. at 338.

Based on these facts, the *Chatrie* panel reasoned that a reasonable user would understand that he gave Google broad authorization to save Location History data from wherever he went with his device. *Id.* The Fifth Circuit's initial departure from the Fourth Circuit panel on the threshold search question is thus rooted in a different understanding of how the Location History opt-in process works.

The petition parrots some of *Smith*'s characterizations of the opt-in process and suggests that this case presents a question of whether opt-in Location History information is provided voluntarily. Pet. at 3, 13, 15, 32. The record in this case, however, shows that Location History is an account-level setting that the user can toggle on or off, and that Petitioner did not contest the voluntariness of his opt-in before the trial court.

III. Petitioner failed to establish a subjective expectation of privacy in the trial court, and he did not develop a record on any other sort of search claim.

Regardless of any broader concern about geofence search warrants, Petitioner made no effort to establish a personal Fourth Amendment right in the limited data disclosed to law enforcement in this case. That makes this case a poor vehicle for determining the nature of any Fourth Amendment interest in time-and-place-limited data disclosed to law enforcement via geofence search warrants.

At the suppression hearing, Petitioner had the burden to plead and prove that he was subjected to a Fourth Amendment search. *State v. Klima*, 934 S.W.2d 109, 111 (Tex. Crim. App. 1996); *accord Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980). Ordinarily, that involves showing that the government either trespassed on property or intruded on a legitimate expectation of privacy. *See United States v. Jones*, 565 U.S. 400, 409 (2012). A legitimate expectation of privacy is a subjective expectation of privacy that society is prepared to recognize as reasonable. *Kyllo v. United States*, 533 U.S. 27, 33 (2001).

Here, Petitioner failed to satisfy his initial burden to show a search occurred. He called no witnesses at the suppression hearing and offered no evidence concerning an expectation of privacy. He never even asserted a subjective expectation of privacy in his location data, which he had voluntarily relinquished to Google.

Petitioner's only search theory articulated to the trial court was that location data generally is "sensitive"

and capable of revealing "the privacies of life," and its disclosure to law enforcement is therefore a search under *Carpenter*. (CR.95–96). Of course, *Carpenter* by its own terms did not apply. This Court intentionally drafted *Carpenter* narrowly, expressing no view on "tower dumps" that reveal all the devices that connected to a particular cell site during a particular interval, so as to not "embarrass the future." *Carpenter*, 585 U.S. at 316. And *Carpenter*'s rationale did not apply either. Whereas *Carpenter* concerned voluminous CSLI records capable of providing an intimate window into the privacies of a person's life and was "not about a person's movement at a particular time," *id.* at 315, the two hours and twenty-five minutes of location data here comprised a single, brief trip at a particular time. Whereas cell phones log CSLI "without any affirmative act on the user's part beyond powering up," *id.*, users enable Google's Location History feature for the purpose of keeping a log of places visited. Simply put, Petitioner's citation to *Carpenter* did nothing to establish a personal expectation of privacy in the data at issue.

The record of the suppression hearing contains only what Respondent entered: the warrant and supporting affidavit, cover letters from Google that accompanied the disclosures, Google's privacy policies in effect at the time of the offense and at the time of trial, Google's published explanation of the Location History feature, and Google's published explanation of Android device location settings. (SX. P1–8). As described in these documents, Location History is "turned off by default." (SX.P7). It is a feature distinct from a device's location settings, and a phone user must opt in to the feature from within his Google account settings before the phone will report Location History. (SX.P7, P8).

Location History is stored only when the user is carrying a device where (1) he is signed into his Google account, (2) he has Location History turned on, and (3) the device has Location Reporting turned on. (SX.P7). Contrary to Petitioner's claim that users are "bombarded" with requests to opt in across multiple apps and that Location History can be created via other apps given access to location services, (Pet. at 3, 15, 32 & n.17), the record in this case indicates that Petitioner had to opt in to Location History at the account level before Google would maintain his Location History at all.[10] Given that Google users opt in to Location History for the purpose of logging their movements, Petitioner's failure to develop the record below makes this case a poor vehicle for extending the narrow holding of *Carpenter* beyond its facts.

Petitioner's further failure to develop a record on any non-*Carpenter* claim makes this case an even worse vehicle for recognizing any of the alternative search theories Petitioner proposes. Petitioner argues that the disclosure of location data to law enforcement "constituted a search from a property perspective," (Pet. at 33), but without any such claim, citation to positive law, or litigation of ownership below, this would be the wrong

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[10.] The record in this case also contains a draft report from the Scientific Working Group on Digital Evidence (SWGDE) on best practices for obtaining Google location data, although it was not yet before the trial court when it denied Petitioner's motion to suppress. (17RR.255 (mislabeled Defense Exhibit B)). The draft SWGDE report includes Google's affidavits filed in *Chatrie* as an appendix, and it confirms that only Location History data—as opposed to any other location information from web and app activity—was stored in the Sensorvault and disclosed to law enforcement under geofence warrants. (17RR.263).

case to recognize a chattel-based Fourth Amendment interest in location data. *See Carpenter*, 585 U.S. at 406 (Gorsuch, J., dissenting). The Court of Criminal Appeals has already fractured from three judges' attempt to recognize Petitioner's unlitigated privacy interest in "IP history," and Petitioner now asks this Court to recognize a privacy interest in "identifiers and private data beyond location." Pet. at 13. But Petitioner gave the trial judge no opportunity to rule on this theory, and the record remains undeveloped as to any Fourth Amendment interest in account identifiers like IP addresses. Even if Petitioner had asserted an expectation of privacy in his IP addresses at the suppression hearing (and the record had been developed as to what IP addresses are), that claim would not warrant this Court's review: federal and state courts agree that there is no expectation of privacy in IP addresses.[11]

Finally, Petitioner's failure to plead and prove a subjective expectation of privacy at the suppression hearing means that an opinion in this case would not need to reach the Fourth Amendment questions most likely to

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[11] "Every federal court to address this issue has held that subscriber information provided to an internet provider is not protected by the Fourth Amendment's privacy expectation." *United States v. Perrine*, 518 F.3d 1196 (10th Cir. 2008) (collecting cases). That now includes the Fifth Circuit, which has held post-*Carpenter* that IP addresses "fall comfortably within the scope of the third-party doctrine." *United States v. Contreras*, 905 F.3d 853 (5th Cir. 2018). State supreme courts have agreed. *See, e.g.*, *Commonwealth v. Kurtz*, 2025 WL 3670767, at *14 (Pa. 2025) (publication pending); *State v. Brown*, 577 P.3d 1045, 1067–68 (Haw. 2025); *State v. Diaw*, 268 N.E.3d 400, 407–08 (Ohio 2025); *State v. Mixton*, 478 P.3d 1227, 1234 (Ariz. 2021).

have broader application. The opinion would not need to clarify probable cause and particularity requirements for electronic-consumer-data warrants. Nor would it need to further develop the jurisprudence related to the good-faith doctrine. The only jurisprudential clarity to be gained from an opinion in this case would lie in a holding that there is no legitimate expectation of privacy in two hours and twenty-five minutes of opt-in Location History data—a pin in the map opposite *Carpenter*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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