NO. ______

IN THE

SUPREME COURT OF THE UNITED STATES

MACKENZIE BECKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX
TO
PETITION FOR A WRIT OF CERTIORARI

Table of Appendices

FILED
United States Court of Appeals
Tenth Circuit

March 9, 2026

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MACKENZIE BECKER,

Defendant - Appellant.

No. 24-1331

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:23-CR-00285-CNS-1)

Perrin Tourangeau, Assistant Federal Public Defender (Virginia L. Grady, Federal Public Defender, with her on the briefs), Denver, Colorado, for Defendant-Appellant.

Michael F. Houlihan, Assistant United States Attorney (Peter McNeilly, United States Attorney, with him on the briefs), Denver, Colorado, for Plaintiff-Appellee.

Before **HARTZ**, **TYMKOVICH**, and **McHUGH**, Circuit Judges.

HARTZ, Circuit Judge.

After Defendant Mackenzie Becker apparently discharged a firearm during a road-rage incident, police executed two search warrants for an address associated with Defendant and found evidence used to convict him of firearms and drug charges. He now argues that the district court erred in denying his motion to suppress that evidence because the affidavit supporting the first warrant did not sufficiently link the road-rage incident to the address searched by the officers. He also contends that his conviction as a felon in possession of a firearm must be reversed because the statute of conviction, 18 U.S.C. § 922(g)(1), violates the Second Amendment.

We affirm. The affidavit established probable cause that evidence of the road-rage incident would be found at the searched house. One could reasonably infer that the house was a residence of Defendant's because a search of law-enforcement databases attributed the address to him, and police surveillance corroborated the attribution: the car Defendant drove during the incident was parked in the house's driveway and he was observed washing his car there and entering and exiting the house. Also, one could infer that Defendant would keep the firearm at his residence. That three weeks passed between the incident and the application for the warrant did not undermine that inference. And Defendant's Second Amendment challenge is foreclosed by this court's precedents.

I. BACKGROUND

The alleged road-rage incident occurred on February 13, 2023. Detective Gerald Sloan of the Denver Police Department investigated the incident. Detective Sloan's affidavit for a search warrant described as follows the results of the investigation:

The victim told officers that he observed a driver commit several egregious traffic violations while merging onto the interstate. When the victim pulled alongside the other driver to "speak" with him, the driver brandished a firearm. R., Vol. 1 at 37.

Fearing for his safety, the victim drove toward the nearest exit. The other driver followed, pulled alongside the victim, and fired a shot in his direction.

The victim took a picture of the other vehicle. Although it showed a gray automobile, DMV records for the license plate in the picture reported that the plate was attributed to a green Saab. As we shall see, there turned out to be two Saabs associated with Defendant—one green and one gray—that bore license plates with the same number.

According to the DMV records, the green Saab was registered to Defendant with an address at an apartment at 1302 South Parker Road. Defendant's driver's-license photo matched the description given by the victim. Detective Sloan also discovered that there were several active arrest warrants for Defendant and that he had two prior felony convictions, which prohibited him from possessing a firearm.

Officers visited the apartment address and found a green Saab bearing the same plate number as the car from the incident, but the car appeared to be abandoned. Although the plate was apparently a front plate (it had no registration stickers), it was attached to the car's rear. A search of records from license-plate readers revealed that a plate with the same number had been observed on a gray Saab sedan 10 days before the road-rage incident.

Detective Sloan searched "several law enforcement databases," *id*. at 38, and found a second address attributed to Defendant—a house on West Iliff Lane. Although the affidavit did not specify all the databases checked by Sloan and where he found what, the affidavit elsewhere notes that he looked at DMV records and researched Defendant "through the National Crime Information Center ('NCIC') and the Colorado Crime Information Center ('CCIC')." *Id*. at 38.

On March 1, about two weeks after the road-rage incident, officers visited the West Iliff Lane house. They found a gray Saab parked in the driveway. The affidavit describes the gray Saab as "identical" to the car involved in the incident, *id*. at 41, and the gray Saab bore a license plate with the same number as both the car from the incident and the green Saab previously seen at the South Parker Road apartment. On the officers' return five days later they observed Defendant exiting the house and entering the gray car several times. They also observed him hand-washing the car in the house's driveway.

On March 7 Detective Sloan obtained a warrant to search the West Iliff Lane house and the gray Saab for, among other things, firearms, ammunition, and items that would establish who controlled the premises. The supporting affidavit included the following paragraph:

> Your Affiant believes that whether or not the firearm sought is recovered, the above items would tend to show that a firearm existed and may have once been located in a place to which the suspect had access and that these items would tend to connect the suspect with the weapon sought. A firearm is not normally disposed of after the commission of a crime, and it is, therefore, still likely to be found in any location or vehicle to be searched associated with BECKER. Furthermore, Your Affiant believes, based on several law enforcement records, including the sighting of BECKER, that BECKER resides at the SUBJECT PREMISES. Your Affiant would like to remind the courts that BECKER is a fugitive of justice.

Id. at 41–42.

A state magistrate judge approved the search warrant that same day, and police executed the warrant two days later. Because the officers discovered evidence of drug trafficking, they paused to obtain a second warrant to search the house for further evidence. They found fentanyl, cocaine, firearms, and ammunition.

Defendant was indicted in the United States District Court for the District of Colorado on four gun and drug charges. He moved to suppress the evidence of the searches, arguing that the affidavit underlying the first search warrant was not supported by probable cause because it did not establish a nexus between the alleged criminal activity and the address searched. (If the first search was unlawful, evidence seized during the second search would also be inadmissible as fruit of the first search.) The district court denied the motion. Defendant pleaded guilty to possession with intent to distribute fentanyl, possession with intent to distribute cocaine, and being a felon in possession of a firearm and ammunition, but he preserved his right to appeal the suppression ruling.

II. DISCUSSION

Defendant challenges the warrants to search the West Iliff Lane house, and, to preserve the question for future review, he argues that 18 U.S.C. § 922(g)(1) is unconstitutional facially and as applied to him.

A. Probable Cause

"A search warrant can issue only upon a showing of probable cause, meaning that the supporting affidavit must provide a substantial basis to conclude that there is a fair probability that contraband or evidence of a crime will be found in a particular place." *United States v. Alqahtani*, 73 F.4th 835, 842 (10th Cir. 2023) (brackets and internal quotation marks omitted). We review the district court's factual findings for clear error, viewing the evidence in the light most favorable to the findings. *See United States v. Sadlowski*, 948 F.3d 1200, 1203 (10th Cir. 2020). We review de novo its determinations relating to the sufficiency of the warrant. *See id*. But "[w]e afford a magistrate judge's probable cause determination" to support a search "great deference" and "review merely to ensure the Government's affidavit provided a substantial basis for reaching that conclusion." *Id*. (internal quotation marks omitted).

1. *Nexus between Defendant and the address*

Defendant first contends that Detective Sloan's affidavit did not support the inference that Defendant lived at the West Iliff Lane address. He points out that the warrant did not provide any account of a substantive investigation ruling out the South Parker Road apartment as Defendant's residence and confirming who owned or rented the West Iliff Lane house. Defendant also argues that the affidavit relied on vague references to police databases without identifying the contents of those databases. He relies on *United States v. Roach*, 582 F.3d 1192, 1203 (10th Cir. 2009), for the proposition that "'a warrant must be supported by facts demonstrating probable cause, not by police summaries of what they have concluded from such facts.'" Aplt. Br. at 15 (quoting *Roach*, 582 F.3d at 1203 (emphasis omitted)). The support for the inference of a fair probability that Defendant lived at the West Iliff Lane address—the use of "several law enforcement records, including the sighting" of Defendant—is to Defendant a bare "police summar[y]" that is not sufficient to establish probable cause. Aplt. Br. at 15 (internal quotation marks omitted).

But, as the government argues, Defendant misapprehends what *Roach* deemed a "police summar[y]" and why it was insufficient. *Roach*, 582 F.3d at 1203. The defective affidavit in *Roach* linked 33 gang members to 15 different addresses with the general statement that "[o]fficers have verified that the individuals listed below live at the following addresses, through investigations, which included checking for utilities information, driver's license records, real estate records, Wichita Police Department records, tax records, social security records, U.S. Postal Service records, interviews and/or surveillance." *Id*. at 1202 (internal quotation marks omitted). From that broad assertion, the reviewing magistrate judge could not determine which of the listed methods was used to verify each defendant's address. *See id*. at 1203. The only remaining support in the affidavit for the probable-cause determination was the "police summar[y] of what they had concluded," namely that "officers have verified that the individuals listed below live at the following addresses," which did not suffice. *Id*.

What *Roach* expressly did *not* take issue with was the described methods of linking the defendant to the address—"checking for utilities information, driver's license record*s*, real estate records, *Wichita Police Department records*, tax records, social security records, U.S. Postal Service records, interviews and/or surveillance." *Id*. at 1202 (emphasis added); *see id*. at 1202–03 ("Of course, the difficulty with this statement is *not* that the methods described, if each and every one were successfully used to link Roach to 1441 N. Minneapolis, would be insufficient. Rather, it is that the statement as phrased does not reveal which of these methods was, in fact, used by police to connect Roach to the premises"). Detective Sloan had success here with at least one of these investigative methods (checking law-enforcement records). Even though his affidavit did not state which law-enforcement databases associated Defendant with the West Iliff Lane house, it is clear that at least one linked him to the address. *See also United States v. Sanchez*, 725 F.3d 1243, 1248–49 (10th Cir. 2013) (distinguishing *Roach* because "the affidavit here specifically stated the investigatory techniques used to verify [the defendant's residence]: searches of state and local databases and a telephone company's subscription records").

Moreover, the database information was corroborated by the affidavit's account of observations of Defendant at the address. Officers found the sedan from the road-rage incident parked at the address, and Defendant was seen washing it in the driveway and repeatedly entering and exiting the house. The affidavit established a fair probability that the house was a residence of Defendant's.

2. *Nexus between the incident and the address*

Defendant next argues that even if the affidavit connected him to the West Iliff Lane house, it did not link the road-rage incident to that address because three weeks passed between the incident and the application for a search warrant, so officers could no longer reasonably infer that the firearm would be at Defendant's residence. Firearms, Defendant contends, are easily concealed and disposed of and therefore, under *United States v. Rowland*, the firearm's continued presence at the West Iliff

Lane house was no "more likely than the otherwise endless possibilities." 145 F.3d 1194, 1205 (10th Cir. 1998). Defendant discounts the affidavit's assertion that "[a] firearm is not normally disposed of after the commission of a crime," R. Vol. 1 at 41–42, because "'[f]or an officer's experience and training to support a finding of probable cause, the affidavit must set out *facts* explaining why, based on this experience and training, there was reason to believe the contraband is more likely to be found at the particular location.'" Aplt. Br. at 18 (quoting *United States v. Mora*, 989 F.3d 794, 802 (10th Cir. 2021)).

We disagree. Defendant seeks to apply *Rowland*'s language to facts quite different from those it was referencing. In that case, officers searched the defendant's home after he picked up video tapes containing child pornography from his post office box. *See Rowland*, 145 F.3d at 1199–1200. The affidavit supporting the search warrant stated that officers anticipated that the defendant would pick up the tapes from the box, take them with him to his workplace, and then take them home, but it did not suggest that the defendant had ever actually transported contraband to his house or stored it there. *See id*. at 1204. We held that the house was "but one of an otherwise unlimited possible sites" that the defendant could have taken the tapes for viewing or storage, but the warrant provided no basis to rule out those other sites. *Id*. at 1205. *Rowland* recognized that "[p]robable cause to search a person's residence does not arise based solely upon probable cause that the person is guilty of a crime," and a search warrant's supporting affidavit must provide "additional evidence linking the person's home to the suspected criminal activity." *Id*. at 1204. But supplying this "additional evidence" is not so high a bar as Defendant suggests.

For example, in *United States v. Harris*, 735 F.3d 1187, 1191 (10th Cir. 2013) (Gorsuch, J.), we upheld a search warrant for the defendant's auto shop against a challenge that invoked *Rowland*. The warrant affidavit established that there was a "fair probability" that a stolen van used in a murder under investigation would be hidden in the auto shop. There was evidence that a Mr. Johnson had provided the van, had attempted to evade officers before proceeding to the shop (which had served as a front for illegal activity in the past), and used a key to enter the locked shop. *See id.* at 1190–91. An officer also attested that individuals involved in a violent crime sometimes hide evidence at a friend's or a common "'clubhouse.'" *Id.* at 1190. We said that "[t]his just isn't a case like *Rowland* where police sought to search a place associated with the defendant (let alone his home) only because they suspected the defendant of a crime." *Id*. at 1191. In *Harris* there was "'additional evidence'" suggesting a link between the crime and the place to be searched. *Id*.

Likewise, Detective Sloan's affidavit supplies additional evidence linking the West Iliff Lane house to the offense. We have already noted the evidence that the house was a residence of Defendant's. And law-enforcement experience, precedent, and common sense strongly support an inference that the firearm would be kept at the user's residence. Detective Sloan's affidavit stated that "[a] firearm is not normally disposed of after the commission of a crime," and the one that Defendant used during the road-rage incident was "still likely to be found in any location or vehicle to be searched associated with [Defendant].” R., Vol. 1 at 41–42. This last point has been repeatedly recognized by the courts. *See, e.g.*, *Alqahtani*, 73 F.4th at 844 (“[A] personal firearm is the type of evidence likely to be kept in a suspect’s residence” (brackets and internal quotation marks omitted)); *United States v. Rahn*, 511 F.2d 290, 293 (10th Cir. 1975) (reasonable to assume that the defendant kept weapons in his home); *United States v. Jones*, 994 F.2d 1051, 1056 (3d Cir. 1993) (same); *United States v. Anderson*, 851 F.2d 727, 729 (4th Cir. 1988) (endorsing view of the Fifth and Eighth Circuits that firearms are generally kept at home or with their owner). *But see United States v. Charest*, 602 F.2d 1015, 1017 (1st Cir. 1979) (holding it was unlikely that a defendant would hide in his home a firearm used in a murder). In our view, there was certainly a *fair probability* that the firearm used in the incident, and evidence of the firearm, could be found at the West Iliff Lane house.

Defendant argues that because three weeks had passed between the road-rage incident and Detective Sloan’s application for the warrant, the firearm “truly could have been anywhere.” Aplt. Br. at 18. We do not dispute that an extended period between the criminal activity and the issuance of the search warrant could undercut the inference that contraband is still in a defendant’s possession or at the defendant’s residence. *See Alqahtani*, 73 F.4th at 844 (“Probable cause cannot be established if information has grown stale, i.e., if too much time has passed between the receipt of information and the issuance of the warrant”). But three weeks is hardly enough time to defeat the inference that the firearm was at Defendant’s residence. That inference can endure "for an extended period of time."[1] *Id*. (holding that there was probable cause that a firearm was still in the defendant's residence even though it was last seen there five months ago); *United States v. Steeves*, 525 F.2d 33, 38 (8th Cir. 1975) (holding that there was reason to believe a firearm would remain in defendant's home almost three months after he robbed a bank). It would seem unlikely that Defendant would dispose of the firearm when his prior felony conviction would make it that much more difficult to acquire a replacement. And here officers knew that another, and more observable, instrumentality of the crime—the gray Saab—remained at the same address.

Defendant's reliance on *Mora*, 989 F.3d at 802, is misplaced. In *Mora* we considered searches of a defendant's home after he had smuggled aliens across the border in the back of a tractor trailer. *See* 989 F.3d at 798. Officers found the trailer in a Walmart parking lot shortly after the aliens had been dropped off and hurried to the defendant's home before his return; they arrested him there and performed an unjustified protective sweep of his house. *See id*. at 797–98. The government argued that a search warrant, which was issued in reliance on evidence found during the

[1] In his reply brief, Defendant challenges this proposition by citing the divided opinion in *United States v. Wilson*, 153 F.4th 478 (5th Cir. 2025), which postdated the government's response brief. This out-of-circuit opinion is not binding on us and is inconsistent with our precedents. *Compare id*. at 486 (firearms are "portable, easily transferred, and often quickly discarded" and thus the likelihood that a firearm stored at home remains there "'quickly dwindles' with each passing day"), *with Rahn*, 511 F.2d at 293 (finding it reasonable to assume that individuals keep firearms in their homes for long periods of time, even though the firearm had never been observed at that location).

unlawful sweep, was nonetheless justified because there was probable cause that the officers would find evidence of alien smuggling in the home. *See id*. at 800–01. We said that when determining whether there is a sufficient nexus between a crime and a suspect's home to justify a search of the home, some factors that courts may consider are "(1) the type of crime at issue, (2) the extent of a suspect's opportunity for concealment, (3) the nature of the evidence sought, and (4) all reasonable inferences as to where a criminal would likely keep such evidence." *Id*. at 801. Drug smuggling, for example, is part of "a special class of crimes where we have not required particular facts to support the inference that a drug trafficker keeps his supply at his residence" because that factual "gap can be filled merely on the basis of the affiant-officer's experience that drug dealers ordinarily keep their supply, records and monetary profits at home." *Id*. (internal quotation marks omitted). *Mora* concluded that "alien smuggling is not part of that special class where we have held that probable cause that a defendant committed the crime suggests the concealment of evidence in the home." *Id*.

A firearm, however, belongs to that special class. As we recently stated, "[A] personal firearm is the type of evidence likely to be kept in a suspect's residence, and is likely to remain there for an extended period of time." *Alqahtani*, 73 F.4th at 844 (citations, brackets, and internal quotation marks omitted); *see* 2 Wayne R. LaFave, Search & Seizure § 3.7(d), at 539–40 (5th ed.) ("Where the object of the search is a weapon used in the crime or clothing worn at the time of the crime, the inference that the items are at the offender's residence is especially compelling, at least in those cases where the perpetrator is unaware that the victim has been able to identify him to the police").

Because we hold that the warrant was supported by probable cause, we need not consider the government's alternative argument that suppression of the evidence would be improper because officers executed the warrant in good faith.

B. Second Amendment Challenge

Defendant argues that 18 U.S.C. § 922(g)(1), which disarms those "who ha[ve] been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year," is unconstitutional.[2] He seeks to preserve this challenge in case the Supreme Court hears a case addressing the constitutionality of § 922(g)(1) before his conviction becomes final.

But Defendant concedes that, at least for now, this argument is foreclosed by our precedents. We rejected a constitutional challenge to § 922(g)(1) in *Vincent v. Garland*, 80 F.4th 1197, 1202 (10th Cir. 2023), *vacated and remanded*, 144 S. Ct.

[2] In addition to a facial challenge, Defendant challenges the statute "as applied to persons like [himself]" because there is no "relevantly similar historical tradition of firearm dispossession with respect to the circumstances of [his] case." Aplt. Br. at 27. This argument is perfunctory. Defendant does not explain how the statute would be unconstitutional as applied to individuals who, like him, have previously been convicted of violent felonies including aggravated menacing, domestic violence, and third-degree assault. Thus, we decline to consider the as-applied challenge separately. *See* Fed. R. App. P. 28(a)(8)(A) (appellant's opening brief must contain "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"); *United States v. Clay*, 148 F.4th 1181, 1201 (10th Cir. 2025) ("We thus will not consider such issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, in the opening brief" (internal quotation marks omitted)).

2708 (2024) (for reconsideration in light of *United States v. Rahimi*, 602 U.S. 680 (2024)), *and readopted sub nom.*, *Vincent v. Bondi*, 127 F.4th 1263, 1264 (10th Cir. 2025), *cert. denied*, No. 24-1155, 2026 WL 568283 (U.S. Mar. 2, 2026). Because Defendant concedes that we have already decided the issue of § 922(g)(1)'s constitutionality against him, he has failed to identify an error upon which we could reverse.

III. CONCLUSION

We **AFFIRM** the judgment of the district court.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Criminal Action No. 23-cr-00285-CNS-1

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MACKENZIE BECKER,

Defendant.

REPORTER'S TRANSCRIPT
Motions Hearing

Proceedings before the HONORABLE CHARLOTTE N. SWEENEY, Judge, United States District Court for the District of Colorado, commencing on the 8th day of November, 2023, in Courtroom A-702, United States Courthouse, Denver, Colorado.

APPEARANCES

For the Plaintiff:
KRISTIN L. COCCARO, United States Attorney's Office, 1801 California St., Ste. 1600, Denver, CO 80202

For the Defendant:
JARED S. WESTBROEK, Federal Public Defender's Office, 633 17th St., Ste. 1000, Denver, CO 80202

Sarah K. Mitchell, RPR, CRR, 901 19th Street, Room A252, Denver, CO 80294, 303-335-2108
Proceedings reported by mechanical stenography; transcription produced via computer.

* * * * *

(The proceedings commenced at 1:02 p.m.)

THE COURT: We are here for a hearing in United States v. Mackenzie Becker, 23-cr-285. May I have entries of appearance, please.

MS. COCCARO: Yes, Your Honor. Good afternoon. Kristin Coccaro for the United States, and with me at counsel table is Detective Gerald Sloan.

THE COURT: All right.

MR. WESTBROEK: Good afternoon. Jared Westbroek on behalf of Mr. Becker who is seated next to me.

THE COURT: All right. Good morning to you both. We are here on the defendant's motion to suppress evidence, so we will hear from you, Mr. Westbroek, first.

MR. WESTBROEK: Yes, ma'am. I think there are basically five points to make in support of my motion, and the first one starts with whether there's probable cause as articulated in the search warrant to even establish that a crime was committed. I know that we have this alleged road rage incident where an individual is alleged to have cut across several lanes of traffic -- I believe there's five lanes on the -- where I-20 and I-70 merge together -- and that the driver, Mr. Brost, thought that this was such an egregious conduct that he decided to pull up next to the driver going 65 miles an hour presumably to confront the driver while they were driving.

With that, I think right away you have a suspect statement. What -- who -- I've never seen a road rage incident where someone's trying to pull up next to somebody and have a conversation about please don't cut across traffic while we're going 65 miles an hour. I think that's immediately suspect.

The next issue you have with, again, whether probable cause that a crime occurred is that there's no evidence recovered relating to a shot. I understand the Government believes that the shot occurred while they were driving, but Mr. Brost, as the affidavit makes clear, claimed that the shot was fired when they pulled off the exit, the 6th west exit. That exit has one lane, and when you pull off that exit, you're not going 65 miles an hour, and the cars would be right next to each other.

Knowing that, if there was a shot fired, there would be a hole in the car at the very least. There would be evidence of a shot fired at that point. It's not an overly busy area where there would not be people that could see the shot or have any evidence or any statement about that shot, yet we have none of that.

And then you have the officers that responded to Mr. Brost's place of employment, which is a half mile off that exit, and they inspect his car. They find nothing. They go to the intersection where he claims the shooting happened. No evidence of a shooting there.

To make -- to drive the fact home that they had no probable cause to believe that Mr. Becker committed a crime, they pulled his picture, took it to Mr. Brost, and Mr. Brost said, That's not him. What you have instead is a generic description of a white male -- which I think the last time I looked at the census is about 75 percent of the Denver area -- that a white male committed this crime. You can't rely on this generic description to establish that because Mr. Brost is a white male, he must have been the person driving. That description is not specific enough.

I practiced for eight years in Georgia, and the African-American population was about 48 percent of the county that I practiced in, and quite often we would see search warrants and even stops based on a be-on-the-lookout for black males wearing a white shirt, for example, and that would be enough to stop any black male. And the courts there would repeatedly suppress those type of stops, those search warrants based on that type of information because it's not specific enough. It describes too many people in too big of an area to create probable cause or reasonable suspicion that a specific person committed a crime, and that's sort of what we have here.

We have a generic description. And when you have an individual that's identified as being associated with a car, and that picture is taken to the person who claims the crime was committed, and that person can't identify him, we don't have enough specific information to identify Mr. Becker as the alleged perpetrator of the crime.

And I think as a side note to that, Your Honor, if Mr. Becker did pull up next to a car on that exit where it's a one-lane road and Mr. Brost sees the individual point a gun at him, you're talking about two cars that would be right next to each other, he would be able to see the individual that was driving. In fact, he would be able to see Mr. Becker. But he does not. He is not able to identify Mr. Becker. So I think that's the first issue that we have.

And then the second point I would get into is the affidavit does not establish that the Iliff Lane address has any connection to Mr. Becker specifically. Any meaningful connection, I should say. It's not the registered address to the vehicle that he was driving. It's not -- excuse me -- let me back up. All the evidence that we do have is that it was associated with him. The affidavit does not describe what that association is. It doesn't say if it's any different than the address that was the registered address for the vehicle.

And, in fact, the only connection that they were able to establish with Mr. Becker at the Iliff address, Iliff Lane address was that they saw him at the address on two different occasions, on one of them bringing something in and bringing something out. That does not establish that's his residence. It doesn't establish his association with that residence. It doesn't establish his access to the residence.

I think a reasonable person would know -- would not assume that if I show up to my best friend's house to watch a football game, and I bring in a plate of chips in a bag, in a grocery bag or, you know, the new reusable bags that I would not -- that doesn't mean that's my residence. Certainly I might have access to the house, but my access would be limited.

There's no -- when you look at his access to this residence or his association, we have no idea what it is. It's not spelled out in this affidavit. The only thing that we know is that he was there on two occasions, and I believe one of those he was washing a car out front. Again, that's not enough to establish residency, or every single one of us would be residents of our friends', in-laws' houses.

We do know that there's two addresses that we have associated with Mr. Becker. This other address is the registered address for the vehicle. Officer Sloan and his task force show up to that address which is an apartment building, and they see a green Saab in a parking spot, and that's the extent of their investigation to try to connect

Mr. Becker or to see what his connection with that residence was. They don't talk to anybody at the -- in the apartment complex. They don't go to the registered apartment, knock on the door. They don't do anything. It's just shut off as soon as we get there, as soon as he gets there and sees there's a green Saab in a parking spot. No other investigation.

So, again, we don't know what Mr. Becker's connection is to that residence other than it's the registered address for a Saab. And we don't know what Mr. Becker's association is exactly with the Iliff Lane address.

So that leads us to the third point that we have is that the affidavit does not establish there's a connection between the Iliff Lane address and the alleged offense. Mr. Becker was not seen going into that address after the offense. In fact, they didn't see Mr. Becker at that residence until I think like a few weeks later, a couple weeks later, so well after the alleged crime occurred. They don't have -- they don't establish, again, what access he has to that residence. They have nothing -- they don't have anything showing Mr. Becker bringing a personal item into that residence like a bag that would carry a gun or even personal items. They see none of that.

And the affidavit doesn't explain why a gun would be found in that place where Mr. Becker has access and where their affidavit acknowledges that he does have -- they believe he has access, why that gun would be found there as opposed to any place associated with Mr. Becker like the address registered to the vehicle or a Starbucks or the trash can behind the Walmart. There's nothing to explain why they -- that address is connected to Mr. Becker and that there's -- there's a connection between the alleged offense, Mr. Becker, and that residence.

So it's even if Mr. Becker -- you take Mr. Becker out, there still has to be a connection between the alleged offense and the place to be searched. That doesn't exist. We don't know anything -- any reason why. Even if we assume that Mr. Becker committed the crime, the address, the Iliff Lane address and the alleged criminal activity are not connected.

Now, you have this inference I think that the Government draws that, well, people keep guns in their houses. Well, the problem that we have with that is the amount of time between the offense that occurred and when they saw Mr. Becker and when they executed the search warrant. There is -- this is not a special class of case like drug cases where we can assume that they're just kept in those houses. This is a gun case, and there's not one case I've read in the Tenth Circuit or anywhere else -- there might be one, but I haven't read it -- that puts firearm possession in that unique class, especially if the firearm is possessed for a nefarious reason, it's something that's easily disposed of.

And there would have been some sort of description that people keep objects of criminal activity in their homes at all times, which I just don't think is an inference that we draw from what we have here from a firearm, and when you look at the factors that you use to consider whether there is a nexus, one of them is the opportunity to conceal the contraband. With the amount of time, that firearm could be anywhere at this point, and you go back to the factor before that, the type of offense, and the most relevant, again, is those drug offenses.

In this case this isn't a crime like in *Mora* where they had -- they assumed there would be evidence of trafficking undocumented individuals on a phone or in paperwork inside the home. These types of assumptions just do not extend to an offense that occurred almost a month later, or the search that occurred almost a month after the offense.

And the next issue is why -- the affidavit does not establish why he thought a gun specifically would be at that address. It sort of leads into the point I just talked about, but if you look at the affidavit, in the conclusion, I think the first conclusion, Officer Sloan states that -- and I know the Court has it in front of you attached to my pleading, but just to make sure that we're right on this, is that they don't know, A, if there's a firearm in the residence, and they want to look for evidence that a firearm existed and may have once been located in a place to which he, Mr. Becker, had access. That does not say that we want to go -- we believe that there's a firearm in this address. Mr. Becker's connection -- we believe that because this is Mr. Becker's connection to that address. Just they believe that Mr. Becker had access to the address, and there may have been a firearm there at one point in time. They don't know.

So what this turns into then is a fishing expedition. We need evidence to further our investigation to be able to connect Mr. Becker to the alleged shooting. And you see that they don't have enough evidence to establish probable cause because they didn't get an arrest warrant for Mr. Becker. Certainly, if they believe this crime was committed, they would be able to get a -- and they believe probable cause existed to believe Mr. Becker committed this offense, they could have gotten an arrest warrant, and that would have been the first step before trying to go into somebody's -- into an address that is associated with another individual, but we don't have that in this case.

You have this fishing expedition that's set up by the judge -- excuse me -- set up by the affidavit to go in and try to get these items. You see that again when you look at the request to seize a cell phone or any kind of phone that has a GPS location device or capability because it would help them connect Mr. Becker to the crime, and I believe it says help them further their investigation.

When we're -- if we need to further an investigation, that indicates we don't have enough to prove Mr. Becker did this or to connect Mr. Becker to the offense. We don't have anything. We're trying to figure this out, and search warrants are not -- we're not having a search warrant issued so that we can further an investigation and figure out if somebody actually committed a crime. We need to have probable cause the person committed the crime before we get a search warrant. And when you're in the process of investigating the crime, and you need to get in there to see if there's actual evidence, that's a step too far. We don't -- that's not how we do things.

And, finally, Your Honor, we get to the good faith exception. The good faith exception is -- we're allowed to use that, the Government's allowed to use that when an individual, when an officer relies on a search warrant issued by a magistrate. It does not allow them to set aside their own personal experience with probable cause, however. They have to be able to look at the warrant and see if it is -- if it does establish that probable cause, and if it's so lacking in probable cause, they are not allowed to rely on that warrant, and they're assumed to know what the state of the law is. That's imputed to an officer.

In this case you have the same officer that executed the search warrant as the officer that applied for the search warrant knowing that there was no probable cause to issue the warrant because they did not understand or know Mr. Becker's connection to the address, they didn't know if there would be evidence of a crime in that address. These are issues that the officer who applied for the warrant knew because it was in his affidavit.

And when the magistrate issued the warrant one minute after the affidavit was submitted, having approximately seven seconds to look at each page, relying on that warrant is not something that a reasonable officer would do. They understood that there's no probable cause. They understood that there's -- that they are on that fishing expedition.

And it serves the purpose of the exclusionary rule because it requires -- it goes back and reminds officers that you have to establish that there is probable cause to -- well, that you have to explain how the individual's connected to the residence, not just that they're parked in front of it or something as tenuous as that. It reminds them they have to connect the address with the alleged criminal activity, not just we believe this person committed a crime, and because he has access to it, there might be evidence in there.

And it also has to -- it teaches them that they need to establish why they believe evidence of that crime will be in that specific address. When those three things are lacking, the search warrant shouldn't issue. And so when you allow an officer to rely and claim that they're relying in good faith on the search warrant that does not include those things, especially when the person executing the search warrant is the person that applied for the search warrant, it requires -- well, it encourages them to establish those three things.

And that's been the state of the law in the Tenth Circuit forever going back, I think -- well, the first case '84 is I think the one that I read and talked about recently in the last three cases that I've seen on search warrants and the good faith exception. Then you can look at cases like *Gonzales* where they knew a person was associated with an address. They knew that there was a car that the person was associated with, because he was arrested inside the car, and when they found -- when they did an inventory search of that car, they found the clip to a firearm.

They knew that he was prohibited from possessing a firearm. They knew an address where he was supposed to live, and they saw him at the residence I believe twice, and so they had a search warrant issued for that residence, again, presuming that people keep firearms in their homes. And that didn't establish enough to establish the good faith exception applied for those officers. There was no connection between the offense and the home. There was no -- they didn't establish how Mr. Gonzales was connected to the house. Similar in this case. They don't know what his association was, just like they don't know what Mr. Becker's association with that house is.

You also go into cases like *Mora* where there is evidence of a crime that occurred within hours of the time the officers show up at the house, and they're able to seize the defendant before he goes in, and at that point they believe that there's got to be evidence of smuggling aliens in the home because you would have records of that, financial transactions, whatnot. And in that case there wasn't enough. It was too tenuous to say there's too tenuous of a connection between the alleged offense and a search of the home. There was no nexus established at that point.

And we're running into the same situation here. It's too tenuous of a connection to put Mr. Becker and evidence of the crime into that address, and it's -- you cannot rely on that in good faith when you know that these are the components that have been to be present in a search warrant. With that in mind, Your Honor, I'd ask you to suppress the search warrant in this case.

THE COURT: All right. Let me ask you a few questions, because it somewhat sounds like you want the benefit of -- and I'm a Denver native, so it's pronounced

Iliff -- you want the benefit of the Iliff residence being his residence, your client's residence, but at the same time not admitting it's his residence, and actually at some point in this argument you kind of claimed it belonged to somebody else.

MR. WESTBROEK: No, Your Honor. If I did, I apologize. I -- whether Mr. Becker has standing to raise this issue I think occurs after the search itself begins. So if it is Mr. Becker's address residence, which I believe that it is, that's not knowledge that they had when the search warrant was executed. So it doesn't matter if that's his residence at that point. They did not associate that as his residence in the search warrant.

THE COURT: Well, but doesn't the officer specifically state in the warrant that based on his review of law enforcement records that address is associated with him?

MR. WESTBROEK: That it is associated, correct, Your Honor, but what does that association mean? What -- I'm associated with this courthouse. It certainly isn't mine. I appear here all the time. It's the same sort of association. We need to define what that is before we know that we can go in there because there's evidence of a crime in there.

THE COURT: Well, and you mentioned kind of in that vein why would the officer assume it's his residence. Well, the affidavit states that he saw him going in and out several times. He's actually there handwashing a car. I mean, that's not normally something you would do if you're bringing chips and dip to your friend's house. You wouldn't stop and wash your car.

MR. WESTBROEK: That's two occasions. And, Your Honor, I go to my in-laws' house quite a bit. They live in Utah. It's why we moved from Georgia to Colorado. I stay for a weekend. I've washed my car there. I've mowed their lawn. I have taken the trash out. These are all instances where this kind of activity happens, but it's still not my residence.

I think the chip and dip example is sort of a basic example of how this would work, but there are more complicated -- more involved situations where it does not establish -- seeing my car at a residence does not establish that as my residence, even if you see me doing chores or bringing something in and out on one particular day. You still have to establish how those things lead to the conclusion that that is Mr. Becker's residence.

THE COURT: Well, but isn't the thrust of the case law on that basically does he have full access? Is he exercising control over it? Is he moving about such that you could infer that it's his residence?

MR. WESTBROEK: I think, Your Honor, if that -- I can't answer that specifically, if that's the thrust of the case law. I don't know exactly what you're referring to, but I could respond to each of those based on what I've seen. If you look at *Gonzales*, for example, that's his mother's house. He's known to live there which would certainly provide more of a connection than what they had in this instance.

They see him present on two different occasions. The first one he's not seen going in and out of the house as far as I can tell in this search warrant affidavit. The second one is when he's washing the car, and he is seen going in and out of the house. But, again, there's nothing to indicate he's bringing personal items into the home. Not luggage, not groceries, or anything along those lines. So I do not believe that just seeing him at the residence would be enough to establish that is his residence at this point within the search warrant.

THE COURT: All right. Let me hear from the Government. Thank you.

MS. COCCARO: Thank you, Your Honor. First, Judge, I'd like to go to the very beginning and just talk about for a moment how we're here to look at the case, which I know the Court is very well aware of, but this -- we're reviewing sufficiency of the affidavit, so we're not looking -- we're technically not determining probable cause. It has been determined by a magistrate, and we are here to review the sufficiency of the affidavit looking at the totality of the circumstances.

We're simply here to ensure that the magistrate had a substantial basis for concluding that PC existed. And if you read through the affidavit, there is more than enough to determine that there's a substantial basis for probable cause. Going further on just standards, probable cause is probabilities and common sense. You can't -- we don't hold officers to the standard of proving every single thing. Otherwise, we would have a case.

It is probabilities. It's common sense conclusions, and not certainties. So it's defined as a fair probability that contraband or evidence will be found at a location to be searched. That's our basis. Our basis is probabilities, common sense, totality of the circumstances, fair probability. Looking at this affidavit, you have that tenfold.

It's almost -- I'm briefly going to address the lack of the evidence that defendant committed this offense is really -- we are not here under any circumstances to litigate the crime. This -- the officers got a call that this occurred. The witness has absolutely no motive to lie. It is a -- it is a statement made, a picture taken of something that happened to him very soon after it happened. Essentially defense would want you to believe that this person who has got to have mental difficulties called the police in order to make up a story about a random person and take a picture of a random car on the road and just claim he was shot at.

And then, to make matters worse, he doesn't -- if he's making up this entire story to get someone in trouble, he then goes and does not identify them in a photo lineup. That actually adds to his credibility. He's going 65 miles an hour, and he sees a person driving extremely erratically. There is no question -- again, we're not here to litigate, we don't have Mr. Brost testifying to what he saw, but I don't think it was a conversation please don't cross lanes.

I'm sure Mr. Brost was very angry at whatever was going on on the road and gave him like the hand signal kind of thing, which caused this incident. But we're not here to litigate that. That's taken as done. That happened. The police are now investigating, and they're trying to find out who did this crime. So the fact -- we're not here to determine if that actually happened. We're going from the point that it did happen and the police are now investigating the crime.

So as to the defense's next point that the address has no connection to a Mr. Becker, or associated with Mr. Becker, that goes to the questioning, Judge, that you were doing. There is so much connection to Mr. Becker with this crime. You have a license plate which is more than a lot of times we get. A license plate that gives you the name, the registered owner, and an address. So we know the car that was involved in the shooting. We -- their first address that it's associated with. There is a vehicle that matches the description with one license plate, and it's clear from the affidavit that Detective Sloan believed it was the front license plate put on the back. So we're missing a license plate.

So the owner of that car, the person associated with the registered address of that car and the ownership of that car is -- there's another license plate out there. That license plate is found on a car, the exact car from the picture that was taken in the road rage incident, and it is found at this -- I'm going to say it wrong -- Iliff?

THE COURT: Iliff.

MS. COCCARO: Iliff residence. It's parked in the driveway. It's sitting there, and the person that is seen associated with that car matches the description of the shooter, okay? And it does not stop there. There is a second address associated with this defendant in the police database. The magistrate that signed this warrant knows darn well that an address in a police database associated with a defendant is a residence, a place that they gave to the police, a place that they have listed in paperwork prior. This is not something that has to be put in to an affidavit. This is something known. This is common sense to a magistrate or a judge that is signing warrants.

So this word usage of associate, it's the residence. It's the place that this person claimed to be associated with. So whether it is their primary residence, secondary residence or a residence they had, it is their residence, and the magistrate or the judge that signed this affidavit knows that very well, so we have multiple connections to this address.

Then Detective Sloan and other officers see him going in and out. Whether you're bringing groceries, whether you're in and out of a residence doing personal care type activities, this is something that's associated. This is someplace that he has dominion, control over, at least partially, and based on our -- you know, based on the standards -- common sense, totality of the circumstances, fair probability -- we have all of that in everything that was put into that affidavit. So there is really no question who -- whether he belongs to this residence, whether he has access to this residence, whether he has things at that residence. It is fully there in the affidavit and explained thoroughly.

Now, when you talk about connecting the address to the offense, there is no way under any case law that you need to see somebody go from the offense into the home to have them -- to have them connect the offense to the home. If you see in my response, this is called nexus. There's lots of case law on nexus. Nexus is just like probable cause. It is not a hard-and-fast rule. There are many different ways that you can have nexus to connect an offense to a residence in any type of crime. And some of those factors are it's the type of crime, the extent of the suspect's opportunity for concealment, the nature of the evidence sought, reasonable inference where the crime -- where a criminal would keep such evidence. Those are some of the factors that determines the nexus to the place to be searched, or a home.

There is no requirement in any case law of hard evidence or personal knowledge that the illegal activity is linked to that suspected -- suspected home. Now, I understand the argument where drug cases are a class of offense, but as I put in my response, *District of Columbia v. Heller*, which is relied on for a lot of reasons, specifically talks about firearms. Firearms are carried on individuals for self-protection, and they're also kept in homes for self-protection.

This is exactly what Detective Sloan put in his affidavit in terms of his 17 years of police experience knowing people don't necessarily get rid of their guns most of the time, and they're kept with them. They're kept in their home for self-protection or they're kept on them for self-protection. That is exactly why you search a home for a gun. A gun is not something that is used and thrown away. It's something that is kept, and that is very -- made very clear in the affidavit. So it is very reasonable to believe that a firearm that the defendant is accused of using would be kept in his home.

I very -- I went into detail in terms of citing why *Mora* and also *Rowland* is very different from this case. *Mora*, in that case, there was no time to conceal anything. They had gone from -- from the act of finding the crime to the home. They were not allowed to get into the home because they had no time for concealment.

The defendant in this case had plenty of time to hide the gun or just keep the gun on him. He hadn't been contacted by police. He had no reason to think he was actually under investigation for anything or that anybody had identified him. So the reasonable inference would be that he still had his gun, so completely different from *Mora*.

Rowland is distinguishable because of the type of crime and the evidence sought. You can watch -- it's mail, and there was no connection that he ever took mail to the house. It's not something -- it actually said he often went back to his office, so there is no -- you can't compare what a criminal would do with mail as opposed to a gun. Very different pieces of evidence, things that are kept on you and things that are not kept on you. So distinguishable and not relevant at all in this case.

Gonzales is -- is also a -- is a nonsense-type argument because they found ammunition in a car on a stop.

There was no shooting crime. They don't know -- there was no vehicle associated with this house. It is in no way -- they didn't have half the evidence or half the information that Detective Sloan had when writing this affidavit in *Gonzales*. It's not comparable except for that there's -- they're looking for a gun. That's the only comparison that could possibly be made to *Gonzales*.

Good faith, Judge, defense's argument about good faith -- one moment, I'm sorry. Oh, I also, Judge, before I get to good faith, I just wanted to address one other thing about what defense argued about needing an arrest warrant before you ever get a search warrant. That -- I don't know why we would ever have a search warrant. If we had enough to arrest somebody, and we could only legally do search warrants after somebody is arrested, we would have a lot less arrests.

I mean, search warrants are an investigative tool. That's what they are, and you have to be able to go in front of a judge and say you have enough to reasonably believe this person committed this crime, and this evidence will be there. But if you have to have all the evidence you needed to arrest somebody and prove it, bring him in front of a jury and prove that case, we would never do search warrants, and you would probably have, I don't know, 60, 80 percent less arrests. It's an investigative tool, and there are boundaries that we are restrained by, and that's exactly what happened here.

There's probable cause to believe Mr. Becker committed this crime, and we're looking for evidence of that crime, but we would -- if we didn't find it, we would never have enough to arrest this person and bring them in front of a jury and claim we could prove it beyond a reasonable doubt. That's what a search warrant is. It's an investigative tool, and that's what we're using it for here, and a judge in a court determined there was enough probable cause to make that search.

And leading into the good faith on that is if you hold an officer -- if you're claiming the officer put together an affidavit with probable cause knowing that there was not probable cause and just seeing what they could get from a -- from a judge or a magistrate, that's not the good faith standard, or at least I didn't think that was the allegation that was made by the papers, Your Honor, essentially asking you to make a judgment on the judge that ruled in this.

The purpose of the good faith argument and to allow not to have suppression is to stop -- is to stop officer disciplinary or to keep officers from doing the wrong thing. If they legitimately rely on a warrant that a judge has signed off on because the judge finds that there's probable cause, that's the good faith exception. We're not in my understanding holding officers -- allowing them to just throw things against a wall and see what sticks, unless that's the allegation that's being made, which I don't think it is.

I believe this affidavit was put together with a lot of facts that connects Mr. Becker to a crime, to the house, to a car committed in the crime, and there was legitimate facts for a sufficient finding of probable cause, and that's exactly what the judge did in this case. There was not -- there was no -- there's nothing here to deter. If you're going to go against the good faith exception, it would have to be to deter officer misconduct, and there is absolutely nothing in anything here, in any of the paperwork, in any of the affidavits or the investigation that needs to be deterred, so that good faith exception does apply in this case. That's all I have, Your Honor, and I would ask that you deny the defendant's motion to suppress.

THE COURT: All right. Thank you.

Mr. Westbroek, did you want a brief response?

MR. WESTBROEK: I do, Your Honor. And I think I'll go in reverse order to track the Government.

THE COURT: All right.

MR. WESTBROEK: So getting to deterrence, if the Court looks at *Gonzales*, *Dutton*, cases where the good faith exception did not apply, it's not about deterring misconduct. It's about deterring reliance on an affidavit that does not establish probable cause, and that's true even in the -- I want to say *Dutton* where they followed the procedure to get the search warrant. They went to the local attorney. They went to -- and then submitted it to the magistrate.

Officers can't use a magistrate to insulate themselves from a finding of probable cause or that probable cause didn't exist to exercise -- to exercise a search warrant. That's not an insulating factor. We don't say, well, there's a magistrate, that's it. Officers have to understand whether there is or is not probable cause when they execute the affidavit, and I think that's more of an acute problem in this case because the same officer that drafted the affidavit also drafted -- also executed the search warrant.

So understanding what he believed to be probable cause is not the same as insulating himself because a magistrate found probable cause based on somebody else's affidavit. The knowledge goes back and forth. I don't think there's an insulation there.

Back to having to have an arrest warrant, I didn't say there has to be an arrest warrant. What I'm saying is that before -- if they had enough probable cause to believe he committed a crime, they could have done that, but they sought that. I think that is -- that is indicative of the level of probable cause that they had when they applied for the search warrant. And, yes, search warrants are used as investigative tools, but they are not used as fishing expeditions when you don't have enough to establish that a crime either occurred or that Mr. Becker committed the crime.

A fishing expedition and an investigation are two separate things, and it's clear in the conclusion of the affidavit that we're -- it's looking for maybe there's a gun there. They don't know. There may have been evidence of a gun there. They don't know. They just know that Mr. Becker may have had access. These conditional terms do not show that they are -- they're investigating a crime. They're trying to find evidence so they have something -- they're going on a fishing expedition to see what they can find. They don't know what they're going to find at that place.

And going back to the concealment issue, I think that's an issue that cuts against the Government. I don't believe that they're reading the concealment issue correctly. The concealment issue is not that he -- because he's had it for a month, that he would have kept it there and didn't have a chance to conceal it. Concealment is something that happens relatively quickly.

So we have this allegation of a crime. The person goes straight home. Their ability to conceal that weapon is nonexistent, right? They have that weapon either on them or in a reasonable place that they could have it. It limits the amount of time that that weapon could be deposited in some unlimited unknown number of places. If you have something that occurs three weeks, four weeks later, where that gun is kept -- or if that gun is kept or where it's placed, nobody -- there too many places we could look at.

And I understand that *Heller* talks about whether guns are kept in the house or on the person. But there are numerous cases in the Tenth Circuit that say you can't rely on a canned statement that in my experience guns are kept in the house. That's not enough. You have to have something specific to the individual, not just a prewritten, a precanned statement that guns are kept in their house. There has to be something else.

And the affidavit, again, it does not establish that Mr. Becker had a dominion and control over the Iliff address. I'm probably still not saying that right. It shows access. That's it. That's not dominion and control. There's nothing more than that.

Going back to this connection, the association, there's two addresses associated with Mr. Becker in this search warrant. Number one is the registered address to the vehicle. So there's one license plate, two vehicles and two addresses. Both addresses are associated with Mr. Becker. The first one is just discarded right away. We don't know what his association is with that. It sounds like law enforcement assumed that that wasn't his address. And we don't exactly know what his association is with the second address. We know that he was seen at it. But the registered car, green Saab was also seen at the first residence. So you have a car that's seen at two different residences with the same license plate, with the same registered address, associated with the same individual.

Which one of those connects Mr. Becker beyond just an association with each place? There's nothing in there to say that one way or the other. And to say an association means residence, maybe he was there when a traffic stop happened. Maybe there was some sort of law enforcement action that showed up and he was there. That doesn't establish a residence. It certainly establishes someone might be there, but we don't know what that association is. He was -- who knows what that association is. And that's the fact. We can't say that this is what the person assumed. We have to look at what the words mean in the affidavit itself. Association does not mean residence. Those are two separate things.

This motivation to lie. Mr. Brost didn't say that he pulled up to flip him off. He said he pulled up to talk to him. I don't talk to people with my fingers. So that's not what he claimed happened. And whether there's a motivation to lie to us, I would say the person cut him off. Sure. That happens all the time, and he was pissed off he got cut off, so what did he say? He took a picture of the car that cut him off and said, you know what, I'm going to get you, and who knows? Who knows what happened?

But the fact of the matter is there's plenty here to question his story. Whether he lied, whether he didn't, those are two separate issues of fact at this point. You do have to look at this and say there's more to this than he said a shot was fired. And if I said the Government fired a shot at me, that would not make much sense, but they would -- and somebody would have to go investigate that to determine if what I said was true or not. So that accusation by itself is just not enough to establish probable cause that Mr. Becker committed a crime or that a white male individual in his 30s with an athletic build committed a crime. So that's my brief response, Your Honor. I'd ask you to grant the motion.

THE COURT: All right. Thank you.

Thank you both for supplementing your briefing with oral argument. Having reviewed the briefing and heard the argument, I am denying defendant's motion for the following reasons. Essentially defendant's motion challenges the warrant on three primary bases. One, the initial supporting affidavit failed to establish probable cause to believe that Mr. Becker committed any crime; two, the affidavit failed to establish a nexus between Mr. Becker's activity and the address that was actually searched on Iliff; and, three, there was an argument from the briefing which hasn't been addressed here, which is good, but the third argument was Detective

Sloan omitted facts knowingly or recklessly such that a *Franks* hearing would be appropriate. That was not argued here today. I did not set a *Franks* hearing. I do not find defendant has met the burden to even warrant such an inquiry, so really we're focused on the first two arguments in defendant's motion.

The parties both seem to agree that because there had been a judicial determination of probable cause, this Court is not really in the position to overanalyze whether probable cause existed. I am simply called upon with the task of ensuring that there was a substantial basis provided in the affidavit to support the magistrate's finding of probable cause, and, as I mentioned, I do find that here.

In looking at the four corners of the affidavit, which is what I'm limited to looking at, it appears that the officer detailed the exact steps in leading to the Iliff address. In particular -- and these things become important because it is important to establish how the officer got to the Iliff address. So once the report was received, in checking motor vehicle records the officer was led to the first address where -- in which the registration was tied to.

Apparently two people live at that address, or were purported to live at that address. Upon seeing a Saab with one license plate that exactly matched the photo that Mr. Brost had taken of the encounter, the detective proceeded to apparently turn to a police database. What that consists of I don't know. The magistrate didn't know. But what is in the affidavit is that the officer did go to some other database and found that the Iliff address was associated with Mr. Becker, and because of that, the officer went to that address on at least two occasions and saw Mr. Becker there.

The first time maybe he was not doing anything, but the second time clearly indicated that he was exercising some control over the residence, moving in and out of the residence freely, washing a car. But more importantly, what was found there was a Saab exactly matching the picture with the other license plate on it. So having made that connection, the officer then proceeded to obtain the warrant.

In determining whether, first, there was substantial bases for the judge to find there was probable cause, the Government has rightly pointed out we're talking about common sense and probabilities, not certainties. While Mr. Becker challenges that and challenges Mr. Brost's account of the incident, the fact is the police took the incident as reported. We're not here on whether the offense actually happened. We are here to determine whether there was a sufficient basis to issue a warrant and to follow through with the warrant.

So that there are inconsistencies or seemingly incredulous facts in Mr. Brost's account really makes no difference. As noted, there's been no reason offered as to why he would make up this account. The fact is he made the account to the police. That he doesn't recognize or was unable to identify Mr. Becker, again, is not surprising, one, because of the rate of speed at which they were traveling; and, two, if you assume that his account was true, he had a gun pointed at him, and if you have a gun pointed at you, you're probably not looking much at the person's face. You're looking at the gun. So I don't find that to be an inherently distrustful fact offered by Mr. Brost.

Regardless, the affidavit provided a substantial basis for the conclusion that there was probable cause to believe Mr. Becker was the driver. The victim's photo showed the license plate registered to Mr. Becker. It was parked at a residence that was associated with Mr. Becker. Mr. Becker was seen washing the car and entering the residence multiple times in a single day. This combination of facts would lead really any reasonable officer to believe that Mr. Becker was the person who was involved in the road rage incident, so that argument is rejected.

Turning to whether there's a nexus, to me, that was a closer call. However, again, if we look at the four factors I'm required to look at in establishing the nexus, which the Government indicated the type of crime, the extent of a suspect's opportunity to conceal, the nature of the evidence sought, and the reasonable inferences as to where a criminal would likely keep the evidence, I find in looking at those factors, there was a sufficient nexus to justify requesting this warrant be issued for the Iliff location.

Again, whether the officer knew exactly it was Mr. Becker's residence to me is not the critical inquiry. What the critical inquiry is is whether he was exercising control and demonstrating that he had some dominion over that residence and the fact that he was moving in and out, the car was parked there on at least two occasions indicates that he did live there or at least exercised sufficient control such that the officer could conclude reasonably that the firearm could be there, the firearm involved in the offense could be there.

And, again, I think my critical inquiry on that was what this police database was. Having heard an explanation and understanding that the magistrate judge was called upon to look at that in the few minutes he or she had, I find the reliance on that reference to be perfectly appropriate. The issuing judge was entitled to rely on the detective's opinion that a gun may be hidden there. There's only so many places one would hide a gun, or not knowing that he was charged with any crime or accused of any crime, it may just be not hidden, just in the residence. And having concluded that this was perhaps Mr. Becker's residence, the inference that the gun would be located there was entirely reasonable.

Because of that, I don't need to turn to whether there was good faith or not, but I would note if I had to, and if I include -- had concluded otherwise, I would have found that the good faith exception applied anyway. Again, that the same detective wrote the affidavit and executed the affidavit is not determinative to me. Based on what was in the affidavit and the judge's approval of that, I find it would have been entirely reasonable for the detective to rely on that and execute the warrant.

So for all those reasons, defendant's motion is denied in its entirety, and with that we will be in recess. Thank you, both.

MR. WESTBROEK: Thank you, Your Honor.

MS. COCCARO: Thank you, Your Honor.

THE COURTROOM DEPUTY: All rise. Court is in recess.

(The proceedings were concluded at 1:56 p.m.)

REPORTER'S CERTIFICATE

I, SARAH K. MITCHELL, Official Court Reporter for the United States District Court for the District of Colorado, a Registered Professional Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein at the time and place aforementioned and that the foregoing pages constitute a full, true and correct transcript.

Dated this 19th day of September, 2024.

/s/ Sarah K. Mitchell

SARAH K. MITCHELL
Official Court Reporter
Registered Professional Reporter
Certified Realtime Reporter

UNITED STATES DISTRICT COURT

District of Colorado

UNITED STATES OF AMERICA
v.
MACKENZIE BECKER

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:23-cr-00285-CNS-1

USM Number: 65848-510

Jared Scott Westbroek
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 2 and 3 of the Indictment.

☐ pleaded nolo contendere to count(s) ______
which was accepted by the court.

☐ was found guilty on count(s) ______
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1)	Possession of a Firearm and Ammunition by a Prohibited Person	03/09/2023	1
21 U.S.C. § 841(a)(1) and (b)(1)(A)(vi)	Possession with the Intent to Distribute 400 Grams and More of a Mixture and Substance Containing a Detectable Amount of Fentanyl, a Schedule II Controlled Substance	03/09/2023	2
21 U.S.C. § 841(a)(1) and (b)(1)(C)	Possession with the Intent to Distribute a Mixture and Substance Containing a Detectable Amount of Cocaine, a Schedule II Controlled Substance	03/09/2023	3

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) ______

☒ Count(s) 4 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 14, 2024
Date of Imposition of Judgment

Signature of Judge

Charlotte N. Sweeney, United States District Judge
Name and Title of Judge

August 16, 2024
Date

DEFENDANT: MACKENZIE BECKER
CASE NUMBER: 1:23-cr-00285-CNS-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **One-hundred eighty (180) months on each Count to be served concurrently.**

☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends the defendant be designated to a facility with the Residential Drug Abuse Program (RDAP).
The Court also recommends the defendant be designated to a facility in or near Sheridan, Oregon.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at __________ ☐ a.m. ☐ p.m. on __________ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on __________ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on __________ to __________

at __________ , with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By __________
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MACKENZIE BECKER
CASE NUMBER: 1:23-cr-00285-CNS-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **Three (3) years as to Counts 1 and 3, Five (5) years as to Count 2, to run concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and a maximum of 20 tests per year of supervision thereafter.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: MACKENZIE BECKER
CASE NUMBER: 1:23-cr-00285-CNS-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature ______________________ Date ______________

DEFENDANT: MACKENZIE BECKER
CASE NUMBER: 1:23-cr-00285-CNS-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program of testing and/or treatment for substance abuse approved by the probation officer and follow the rules and regulations of such program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program as to modality, duration, and intensity. You must abstain from the use of alcohol or other intoxicants during the course of treatment. You must not attempt to obstruct, tamper with or circumvent the testing methods. You must pay for the cost of testing and/or treatment based on your ability to pay.
2. You must participate in a program of mental health treatment approved by the probation officer and follow the rules and regulations of such program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program as to modality, duration, and intensity. You must pay for the cost of treatment based on your ability to pay.
3. In conjunction with mental health treatment, you must remain medication compliant and take all medications that are prescribed by your treatment provider. This may include testing as required by your treatment provider, including random blood draws, to ensure that a therapeutic level of your prescribed medications is maintained.
4. You must submit your person, property, house, residence, papers, or office, to a search conducted by a United States probation officer. Failure to submit to search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

The Court's practice is to order the following special condition: Upon release from custody and if supervised in the District of Colorado, you must work with the Probation Office to request a supervision orientation meeting with the Court to discuss the terms and conditions of supervised release and the Court's expectations for such, your plan to succeed during supervision, and your experience in the criminal justice system. This meeting should be conducted within the first 30 days of supervision. The Court permits the defendant to meet with counsel prior to the supervision orientation, if necessary.

DEFENDANT: MACKENZIE BECKER
CASE NUMBER: 1:23-cr-00285-CNS-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the following page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 300.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until ______. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
TOTALS	$ ______	$ ______	

☐ Restitution amount ordered pursuant to plea agreement $ ______

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the following page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Publ. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MACKENZIE BECKER
CASE NUMBER: 1:23-cr-00285-CNS-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $ ______________ due immediately, balance due

☐ not later than ____________________ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal __________ *(e.g., weekly, monthly, quarterly)* installments of $ ______________ over a period of __________ *(e.g., months or years)*, to commence __________ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal __________ *(e.g., weekly, monthly, quarterly)* installments of $ ______________ over a period of __________ *(e.g., months or years)*, to commence __________ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within __________ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
1) A Palmetto State Armory 9mm pistol with the serial number X9039914; 2) A Springfield Armory 45 caliber pistol with the serial number XS523841; 3) A Taurus .38 Special revolver with the serial number CT16564; and 4) the ammunition seized on or about March 9, 2023.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Selected docket entries for case 24−1331

Generated: 03/18/2026 14:30:43

Filed	Document Description	Page	Docket Text
03/18/2026			[11264970] Order filed by Clerk of the Court granting Appellant's motion to extend time to file petition for rehearing. Any petition shall be filed on or before 04/06/2026 (14−day extension). Served on 03/18/2026. Text only entry − no attachment. [24−1331]

Selected docket entries for case 24−1331

Generated: 04/06/2026 10:00:19

Filed	Document Description	Page	Docket Text
04/03/2026			[11270140] Order filed by Judges Hartz, Tymkovich and McHugh granting Attorney second motion to extend time to file petition for rehearing. Any petition shall be filed on or before 04/20/2026. Served on 04/06/2026. Text only entry − no attachment. [24−1331]

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

June 3, 2026

Clerk
United States Court of Appeals for the Tenth Circuit
Byron White Courthouse
1823 Stout Street
Denver, CO 80257

Re: Mackenzie Becker
v. United States
Application No. 25A1343
(Your No. 24-1331)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Gorsuch, who on June 3, 2026, extended the time to and including July 7, 2026.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by
Irma Orellana
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

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