NO. _____

In the Supreme Court of the United States

DEBRA JONES,
INDIVIDUALLY, AS NATURAL PARENT OF
TODD R. MURRAY, AND AS PERSONAL REPRESENTATIVE
OF ESTATE OF TODD R. MURRAY, ET AL.,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Fourth Amendment to the United States Constitution permit an officer at a homicide crime scene to take control of all substantial evidence (here, including one of the two handguns fired at the scene), or is the evidence that may be seized limited to evidence against a person for whom the officer has established probable cause of commission of a crime?

2. Does a person who comes to a closed shooting homicide investigation scene and takes possession of one of the two guns at that scene have a reasonable expectation of privacy barring the investigator from taking that gun?

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

- Debra Jones, individually, as natural parent of decedent Todd R. Murray and as personal representative of the Estate of Todd R. Murray
- Estate of Arden C. Post, as successor to the claims of Arden C. Post, individually, as natural parent of Todd R. Murray

Respondent and Defendant-Appellee below

- United States

Dismissed parties below

- The Ute Indian Tribe was an additional plaintiff at the outset of this case, but was dismissed as a party in 2015.

LIST OF PROCEEDINGS

Court of Federal Claims

No. 13-cv-00227

Jones v. United States

Order Granting Motion to Dismiss (*Jones I*):
July 30, 2015
122 Fed. Cl. 490 (2015)

Sanctions Order (*Jones III*):
July 8, 2020
146 Fed. Cl. 726 (2020)

Summary Judgment Order (*Jones IV*):
July 8, 2020
149 Fed. Cl. 335 (2020)

Spoilation Sanctions Order (*Jones VI*):
Mar. 29, 2023

Judgment in Favor of Defendant (*Jones VII*):
May 7, 2024
171 Fed. Cl. 576 (2024)

U.S. Court of Appeals for the Federal Circuit

No. 15-5148

Jones v. United States

Opinion Vacating and Remanded (*Jones II*):
January 27, 2017
846 F.3d 1343 (Fed. Cir. 2017)

U.S. Court of Appeals for the Federal Circuit

No. 20-2182

Jones v. United States

Opinion Rev/Vac in part, and Remanded (*Jones V*):
February 16, 2022
2022 WL 473032

U.S. Court of Appeals for the Federal Circuit

No. 24-2053

Jones v. United States

Opinion Affirming (*Jones VIII)*:
April 24, 2026
2026 WL 1113469

Rehearing Denial: July 13, 2026

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Debra Jones and the Estate of Arden C. Post (collectively, the "Murray Family") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The order of the Federal Circuit Court of Appeals, dated April 24, 2026, is unpublished but can be found at 2026 WL 1113469 and is reproduced at App.1a.

The Court of Federal Claims' decision is published at *Jones v. United States*, 171 Fed. Cl. 576 (2024) and reproduced at App.17a

JURISDICTION

The Federal Circuit's order denying rehearing *en banc*, dated July 13, 2026 is reproduced at App.119a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The procedural history of this case is lengthy, but it is only important to show this Court how that unique history, and in particular the narrow order on remand after *Jones VI*, resulted in the isolation of the significant Fourth Amendment issue presented; and to show the importance of Supreme Court review to save the FBI from the precedent which the FBI created below, which would cripple federal investigative authority—*i.e.* the holding that the Fourth Amendment barred the FBI from seizing a possibly literal, and at least figurative, smoking gun at a homicide crime scene for which the FBI was the homicide investigative agency.

A. General Factual Background

On April 1, 2007, Todd Murray, a 21-year-old member of the Ute Indian Tribe, had been a *passenger* in a car. The Utah Highway Patrol had initially

attempted to stop the car for speeding, the driver did not stop, and the driver then committed multiple additional traffic offenses. Mr. Murray had not committed any crime, nor was there any warrant for his arrest. He had only one prior and closed misdemeanor for which he had paid a $200 fine. After the highway patrol officer stopped the vehicle and arrested the driver, off-duty Vernal City Police Officer Vance Norton went onto closed lands on the Uncompahgre Reservation, with gun drawn, to attempt to seize Mr. Murray. Norton was more than 40 miles from Vernal, he was 25 miles inside the Uncompahgre Reservation,[1] and he was not cross-deputized by the Tribe or the United States.

Mr. Murray was fatally wounded a few minutes later.

Because the shooting involved the death of a tribal member in Indian Country, the Federal Bureau of Investigation (FBI) assumed exclusive responsibility for the investigation. App.38a, 43a. It did not see or talk to Mr. Murray: Mr. Murray was unconscious from when he was shot until he died at a hospital a short time later, and Mr. Murray had been taken away by ambulance before the FBI agent arrived at the scene.

Officer Norton invoked his right to remain silent at the crime scene.

The FBI agent recalls that someone told him that someone had said that Norton had said that Norton

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[1] Norton had previously also been a police officer in Uintah County. Most of the Uncompahgre Reservation is in Uintah County and the border of the Uncompahgre Reservation has been in the same location since 1882. Norton later asserted he did not know the location of that border. App.29a.

and Murray had exchanged gunshots, and that Mr. Murray then shot himself.

As discussed in detail below, the FBI agent did not investigate the death. Based upon the hearsay upon hearsay statement that Mr. Murray shot himself, App.87a, the FBI agent, also from Vernal, concluded there was no need to investigate his colleague, Norton.

B. The Two Guns That Had Been Fired at the Crime Scene

The evidence established that there were only two guns at the homicide crime scene. The FBI agent took custody of one of those two guns—a Hi-Point .380 handgun that Norton alleged Murray had discharged. App.18a. Yet, the FBI never tested that weapon for blood, tissue, fingerprints, DNA, operability, or ballistic evidence. *Id*.

After it knew about the pending litigation, the United States destroyed the Hi-Point .380 handgun. At the start of this litigation, the FBI claimed it had destroyed that weapon before it knew litigation was pending. The Murray Family found the single document in discovery which showed that the FBI knew about the litigation, gave the bullet casings (which lack independent evidentiary value) to the City of Vernal, but destroyed the gun. Based upon that document showing the FBI's spoliation defense was factually incorrect, the Court of Federal Claims (CFC) concluded, and the Federal Circuit affirmed, that destruction of the Hi-Point constituted spoliation and required sanctions. [*Jones V*, WL 473032 at *9].

The second firearm at the scene was Officer Norton's Vernal City-issued Glock .40 handgun, which

Norton admitted he had twice fired at Mr. Murray. App.33a. After the shooting, Norton's supervisor and friend, Vernal City Police Chief Jensen came to the closed crime scene in a non-investigative capacity. For reasons Jensen either could not or at least would not explain, Jensen gave Norton Jensen's identical looking Vernal City-issued Glock .40 handgun and he took Norton's Glock .40 handgun. App.38a. He remained at the crime scene, with Norton's Glock .40 handgun, but did not provide that gun to the FBI agent.

The FBI never inspected or took custody of Officer Norton's Glock .40 handgun, never tested it, and never examined or preserved Officer Norton's clothing. App.42a. The United States subsequently, in *Jones III through Jones VIII*, argued that it could not have obtained the Glock .40 handgun from Jensen because, it asserted, Jensen had a Fourth Amendment right to refuse to give Norton's gun to the FBI investigator. The FBI likewise permitted Officer Norton to retain his clothing without testing or preservation. The courts in *Jones III* through *Jones V* did not rule on the United States' interpretation of the Fourth Amendment, but in *Jones V*. the Federal Circuit remanded with instructions that the CFC was required to resolve the Fourth Amendment issue. *Jones V* at *8.

As discussed below, the CFC, in *Jones VI*, agreed with the FBI's argument. It held that when Jensen, at the closed homicide investigate scene, in a non-investigative capacity, took the gun from Norton, *Jensen*[2] obtained a "possessory interest" in the gun for

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[2] Norton had given up possession of the gun, and was not the owner of the gun, and therefore Norton had no claim to fourth

Fourth Amendment purposes. App.101a. Based upon that, the CFC concluded that the Fourth Amendment to the United States Constitution barred the FBI from taking Norton's gun from Jensen.

One of the two guns fired the fatal shot. In *Jones I* through *Jones V*, Petitioners showed that examination of the gun that fired that shot would have, much more likely than not, had Mr. Murray's blood, tissue, or biological residue on it. The Murray Family also introduced a close-up photograph of the .380 Hi-Point that did not show blood or tissue. Petitioners also showed that if Norton had fired the fatal shot, in addition to his gun, his clothing would have shown, much more likely than not, Mr. Murray's blood spatter. *E.g.*, CFC Dkt. 51 at 17, 38-43.

C. Procedural History on Spoliation Issues

The Murray Family filed suit against the United States, asserting, *inter alia*, a "bad man clause" claim, based upon their Tribe's 1863 and 1868 Treaties with the United States. 13 Stat. 673; 15 Stat. 619. The "bad man clause" is a clause in the 1868 treaty (and in 8 other treaties with tribes in 1867 and 1868), which provides, *inter alia*, that the United States will pay restitution to tribal member victims of crime where the perpetrator is non-Indian. Because that is a monetary claim against the United States, the CFC had jurisdiction under 28 U.S.C. § 1491(a)(1). CFC Dkt. 1.

The United States filed a motion to dismiss. Primarily at the request by the CFC for supplemental briefing on claims preclusion, the United States asserted

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amendment protection of the gun. *E.g.*, *Hoffa v. United States*, 385 U.S. 293 (1966).

that because the District Court for the District of Utah ultimate dismissed the Murray Family's claims against the state officers, claims preclusion applied. CFC Dkt. 35, 47. In response, the Murray Family argued that claims preclusion did not apply because, *inter alia*, the Utah federal district court order of dismissal was dependent on its prior decision that the FBI, and not the state actors, were liable for any spoliation of evidence at the crime scene. Based upon that prior holding, it then held that the remaining evidence was insufficient to rebut Norton's account as the sole surviving witness. CFC Dkts. 33, 48. The CFC erroneously granted the United States' motion to dismiss. *Jones I*.

The Murray Family appealed, and the Federal Circuit vacated and remanded the case with instructions that the CFC was *first* required to determine if spoliation sanctions applied. *Jones II* at 1363-1364. If any evidence was spoliated which changed the evidentiary landscape, then claims preclusion did *not* apply. *Id*.

In both the first and the second appeals, the Murray Family had discussed at length the obvious substantial evidentiary value of the .380 Hi-Point that the United States had destroyed when it knew about the litigation, and the obvious substantial evidentiary value of the evidence that the United States had *failed* to collect (the Glock .40 handgun, Norton's clothing, hand swabs). The Murray Family also discussed at length the discrepancies between Norton's accounts and between his accounts and the limited evidence

that was available,[3] and between those accounts and the photographs of the crime scene.[4]

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[3] A few of the concerning facts which were significant to the Federal Circuit in *Jones II* and *Jones V* and which the Murray Family reiterated in the subsequent rounds of this matter, e.g., CFC Dkt. 51 at 28-43, *Jones VIII* opening brief at 8-12, are: Norton initially claimed Mr. Murray had shot one round at Norton and then shot himself. After Norton learned that there was a third shell casing "stovepiped" in the .380 gun, he sometimes stated that Mr. Murray had shot at him twice. Mr. Murray was shot on the left side of his head; he is right-handed; he did not have any blood spatter on his left hand. It would have been unlikely he shot himself on his left side with his right hand, but his right hand had been resting in a pool of his blood, and therefore blood spatter on it could not be determined. Mr. Murray's body was badly bruised, defiled, and mutilated before it was returned to his family. Contrary to protocols, local police disrobed Mr. Murray's body and photographed it, including in odd poses and including pictures of one officer sticking his finger into the bullet hole in Mr. Murray's skull. Local police also came to the morgue after hours and took extra vials of Mr. Murray's blood for reasons they could not or at least would not explain, and those vials were never placed in evidence. The FBI ordered an autopsy, which would be done by the state medical examiner; the state medical examiner billed for an autopsy, but did not do one, and did not maintain chain of custody on blood vials. Norton and his friend swapped identical looking guns at the homicide scene. State and local police barred a tribal law enforcement officer from the closed crime scene, while admitting numerous state officers who had no business being there. Norton himself participated in the "investigation," including taking many of the photographs and locating bullet casings. All of these are in addition to the FBI then failing to preserve or later destroying evidence.

[4] Norton asserted he shot twice at Mr. Murray in quick succession while standing still. His two bullet casings were found far apart. A close-up photo of the .380 Hi-Point did not show any blood spatter. The .380 Hi-Point was unusually far from where Mr. Murray fell if it had been a self-inflicted wound. Photographs

As the Federal Circuit concluded based upon the Murray Family's discussion in the first appeal:

> But for the destruction of the cited evidence, Jones may have shown that Murray was, in fact, shot by Norton.

Jones II at 1363.

Upon remand after the first appeal, the CFC imposed what the Federal Circuit subsequently held were insufficient spoliation sanctions regarding the .380 Hi-Point handgun. *Jones III*. Applying legally erroneous analysis, the CFC also held that spoliation sanctions could only apply to the evidence that was collected, that it could not apply to the significant evidence that was at the crimes scene but that the FBI had failed to collect. The United States argued, and the CFC agreed, that the minor spoliation sanction regarding the knowingly destroyed .380 Hi-Point handgun did not change the evidentiary landscape and the CFC readopted its prior decision that claims preclusion applied. *Jones IV*.

The Murray Family again appealed. Again the Federal Circuit vacated and remanded. *Jones V*. In that second appeal, *Jones, V*, the Federal Circuit rejected the CFC's *per se* rule that the FBI could not have spoliated evidence that it never collected. The Federal Circuit held, based upon both general principles underlying spoliation law and numerous cases, that spoliation can apply to both evidence that was collected and later destroyed, and to evidence that was wrongfully never collected. Based upon the Murray Family's repetition

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show that state officers handcuffed the unconscious Mr. Murray and stood off at a distance while he was bleeding to death.

of detailed discussion of the evidentiary importance of the gun that Norton admitted he had fired at Mr. Murray and Norton's clothing, the Federal Circuit reiterated that the evidence that had *not* been collected was substantial, and it remanded for the CFC to decide two remaining elements for spoliation.

D. The Isolation of the Fourth Amendment Issue

It is essential for the Court to understand one of the instructions on remand from that second appeal related to the gun that Norton had fired and his clothing, which resulted in the isolation of the Fourth Amendment issue presented in this matter.

In its second remand order, the Federal Circuit stated:

> [T]he government may have control over evidence where it has jurisdiction to investigate an incident *if its jurisdiction gives it the right to obtain or control that evidence*. We stop short of holding that the government always controls all evidence on an investigation scene.

Jones V at *8. The Federal Circuit provided very clear instructions to the CFC in its remand in *Jones V*. The CFC was *required* to determine whether the FBI had *control* over Norton's gun and clothing at a time when litigation was reasonably foreseeable.[5] If those two

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[5] The CFC held that litigation was reasonably foreseeable, for the same reason that the District Couret in Utah had also held that litigation was reasonably foreseeable. The Murray Family argued that the United States did not preserve that issue for appeal, and also noted even if it were reviewable, it would have only been reviewed for abuse of discretion. The Federal Circuit did not discuss that issue in its opinion.

remaining elements for spoliation sanctions on the Glock .40 and clothing were met, the CFC was *required* to impose a meaningful spoliation sanction regarding them.

On remand, the United States attorneys, representing the FBI, argued that control of Norton's gun and clothing turned on interpretation of the Fourth Amendment to the United States Constitution. The FBI argued it did not have probable cause that *Norton* had committed a crime, and that therefore the Fourth Amendment *barred* the FBI agent from seizing Norton's Vernal-city issued gun (which Jensen possessed), or from testing Norton's clothing or hands for Mr. Murray's blood or tissue.

E. The CFC ruling on the Fourth Amendment Issue

As required by the remand order in *Jones V*, the CFC expressly resolved the Fourth Amendment issue. The CFC held that the FBI lacked "control" over the Glock because Jensen, in a non-investigative capacity at a location 40 miles from where he was chief of Vernal City police, had already taken possession of it. App.99a-101a. According to the court, once Jensen possessed the weapon, the Fourth Amendment deprived the FBI of authority to seize it, absent probable cause that Officer Norton himself had committed a crime with the gun. App.101a.

That was then the CFC's answer to the narrow issue on remand—because the Constitution barred the FBI from taking the Glock .40 handgun from Jensen, the FBI lacked "control" and therefore it was neither required nor permitted to impose spoliation sanctions for the Glock .40. App.101a-102a. The CFC likewise

concluded that the FBI lacked control of and authority to seize Officer Norton's clothing. App.98a-99a.

The CFC's sole citation for that legal holding was a benign footnote in *Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978). The footnote, footnote twelve, does not, in the slightest, bar the FBI from taking possession of a gun that had been fired at a homicide crime scene. The Murray Family contends the footnote is directly contrary to the CFC's interpretation.

The central issue in *Rakas* was whether defendants had standing to challenge an alleged unlawful search of a vehicle. The defendants had been arrested in the vehicle and were charged and ultimately convicted of armed robbery. Defendants argued they had standing to challenge the alleged unlawful seizure of a sawed-off rifle and shells from the vehicle. The Court held that they lacked standing because neither defendant owned the vehicle and neither defendant claimed ownership of the gun or shells.

In footnote twelve to the majority opinion in *Rakas*, this Court discusses that *most* people who possess or occupy real property have a reasonable expectation of privacy in that property, but the thrust of footnote twelve is that there is not a bright line. Ownership or possession often do not create the requisite "reasonable expectation of privacy." And, plainly, the test in *Rakas*, as in multiple other cases from this Court, is "reasonable expectation of privacy," not possession.

Petitioners appealed to the Federal Circuit for a third time, this time seemingly with a foolproof argument. The CFC's judgment was dependent on its Fourth Amendment analysis. And, as discussed below,

its Fourth Amendment analysis was naïve and contrary to multiple decisions from this Court and from other courts that regularly handle Fourth Amendment issues. Petitioners argued that, as the lead investigative agency at a closed homicide scene, the FBI had legal authority and practical control over the critical evidence located there. [Pet. Principal Brief, ECF 51 at 38-43]. Petitioners reiterated that based upon *Jones II* and *Jones V*, the Hi-Point, the Glock, and clothing were plainly relevant and potentially dispositive evidence. [ECF 51 at 38-43].

The Federal Circuit affirmed. It agreed with the CFC that no spoliation occurred because the FBI lacked a duty to preserve the Glock and clothing, reasoning that the evidence available at the time did not sufficiently indicate criminal activity and therefore did not trigger a preservation obligation. App.18a. The Federal Circuit did not directly address the question presented in this petition. Petitioners filed a petition for rehearing or rehearing en banc, asking the Federal Circuit to directly address the Fourth Amendment issue, but the Federal Circuit denied that petition, leaving in place its affirmance of the CFC's Fourth Amendment decision.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Is of Exceptional Importance, Both Because It Would Dramatically Limit Heretofore Common Investigations and Because the United States Itself Obtained the Precedent and Its Law Enforcement Agencies Would Be Bound by It

As shown above, the unique history leading to the remand after *Jones V* isolated the Fourth Amendment issue. By then, the Federal Circuit already determined that *if* the guns and other items were under the *control* of the FBI (and if, as an issue of fact, litigation was foreseeable, as the Courts have concluded it was), the FBI spoliated the guns and meaningful sanctions had to be applied for the FBI's wholesale failure to investigate the death of Mr. Murray. The FBI's sole unresolved argument regarding control was that it did not have control of the evidence because the Fourth Amendment barred it from seizing the evidence.

The decisions below transform a constitutional limitation on unreasonable searches and seizures into a rule that law enforcement investigators are *constitutionally barred* from seizing substantial pieces of evidence at a crime scene (here including one of the two guns at a gunshot homicide crime scene).

The decision below imposes three separate, very substantial, and very dubious constitutional limits on law enforcement investigative power at a crime scene.

First, it gives standing to someone because that person came to the crime scene and obtained possession

of the evidence at the crime scene before the investigator got to the evidence.

Second, it requires the investigator to determine the suspect first and then investigate only for evidence against that suspect. One of the common defenses in criminal cases is that law enforcement prematurely determined its suspect and then only gathered the evidence that would support that premature or prejudged conclusion, ignoring evidence that might point in a different direction. Now the FBI seeks to enshrine in constitutional law a requirement that it can *only* collect inculpatory evidence. The United States and the CFC went even further, concluding that the FBI lacks control of evidence at a crime scene that would help to rule out alternative theories.

Third, per the Courts below, the Constitution bars seizure if the evidence at the crime scene does not inculpate the predetermined suspect. Under that decision, law enforcement cannot seize evidence at that crime scene which is exculpatory of anyone. Nor can they seize items of obvious evidentiary value if they cannot, at the crime scene, determine who the evidence would inculpate or exculpate. Nor can they seize evidence that would be used to disprove theories that are contrary to their prejudged theory.

As discussed below, the Murray Family's view is that the decision is contrary to multiple cases from this Court. It is contrary to this Court's jurisprudence on the reasonably expectation of privacy, plain view, and law enforcement authority to investigate and collect the evidence at a crime scene.

But for current purposes, the issue is whether this Court should review the decision which the FBI

obtained, which would severely harm law enforcement investigative authority at a crime scene.

The present case squarely presents this issue. As a result of the unique and long procedural history, the issue is presented in a very simple form. Here, there were two guns at the scene. One of the two fired the fatal shot. Testing would have shown, much more likely than not, which gun fired that shot. Testing for blood on the gun that fired the fatal shot would be inculpatory, but testing for blood on the gun that did not would have been exculpatory. Both guns had been fired that day: one by Norton and one by Murray. When the FBI arrived, neither Norton nor Murray were in possession of either gun.

Under the precedent that the FBI created, it had to determine in the field, which gun it believed would be inculpatory of its predetermined suspect and which would be exculpatory, and then it established as precedent that the United States Constitution barred it from seizing the gun that it claimed was exculpatory.

If that is the interpretation of the Fourth Amendment that the FBI wants this Court to change to, it should welcome this Court's review of the decision it advocated for below. The rule should not solely apply when the FBI wants to escape liability for its failure to investigate the death of Mr. Murray.

II. The Decision Below is Contrary to Decisions of This Court and Other Circuits, Which Hold That the Criteria for Seizure is Whether the Item is Recognized as Evidence, Not Whether or Who it Inculpates; and That a Person Who Holds, or Here takes, Possession of That Evidence Does Not Have a Reasonable Expectation of Privacy

Under their reasoning, federal investigators may secure a homicide scene and exercise authority over some evidence while lacking control over equally critical evidence solely because a third party took possession of it first. The decisions below thus create the anomalous result that evidence physically present at a federal crime scene would thus fall outside federal control not because it was unknown or inaccessible, but because another actor claimed possession first.

Petitioners contend that this approach conflicts with settled Fourth Amendment precedent recognizing law enforcement authority to seize evidence in plain view during a criminal investigation and misapplies the concept of control governing spoliation. The decisions allow potentially dispositive evidence to evade preservation obligations through a constitutional theory unsupported by this Court's decisions or ordinary investigation and spoliation principles.

The question presented extends beyond this case. It determines whether a third party's asserted possessory interest may prevent federal investigators from obtaining and preserving key evidence at a crime scene and later permit the government to avoid spoliation consequences when that evidence disappears. This petition therefore presents an important and recurring question concerning the relationship among

Fourth Amendment protections, evidentiary control, investigative authority, and the government's preservation obligations.

The Court of Federal Claims concluded that the FBI did not have control of the Glock because a Vernal officer obtained that evidence first. App.101a. There is no Fourth Amendment right that permits someone who simply gets to evidence before the FBI at a crime scene to then enjoy the right to refuse to turn over said evidence in the course of the investigation. Foundational to criminal procedure is the ability to preserve and thoroughly investigate a crime scene, as displayed by decades of Supreme Court precedent.

1. In *Warden v. Hayden*, 387 U.S. 294 (1967), this Court held that officers in hot pursuit of a suspected armed felon may conduct a warrantless search when exigent circumstances exist. This Court also abolished the "mere evidence" rule, concluding that the Fourth Amendment does not distinguish between instrumentalities of a crime and evidence relevant only because it tends to prove guilt, so long as the search and seizure are otherwise lawful. Thus, *Warden* confirmed that law enforcement may lawfully obtain and seize physical evidence relevant to *proving or disproving criminal conduct*, not merely contraband or instrumentalities of a crime. 387 U.S. 300-10. Therefore, the FBI's authority extended to forensic evidence bearing on the shooting, including Officer Norton's firearm, clothing, and biological evidence; the failure to obtain that evidence resulted from unconscionable "investigative decisions" rather than a categorical legal limitation.

2. In *Harris v. United States*, 390 U.S. 234 (1968), this Court held that police may seize evidence without

a warrant when it is in plain view and observed from a location where the officer has a lawful right to be. Thus, federal investigators at the scene of the Murray shooting possessed ample authority to collect and preserve readily observable physical evidence bearing on the shooting.

3. Similarly, *Coolidge v. New Hampshire* recognized that officers lawfully present at a location may seize evidence in plain view, emphasizing that the Fourth Amendment regulates the manner of collection rather than categorically withholding authority to obtain relevant evidence. 403 U.S. 443, 465-73 (1971). Applied here, the FBI investigator was informed by some other officer at the scene that Norton had fired his weapon and that Mr. Murray utilized his, too. App.18a, 33a. Thus, collection would have been firmly within the FBI's authority to secure evidence at the crime scene as the constitutional requirements for seizure were satisfied.

4. In *Texas v. Brown*, 460 U.S. 730 (1983), this Court again held that police may seize an item under the plain-view doctrine when they are lawfully in a position to observe it and have probable cause, under a "flexible, common sense standard," to believe it is associated with criminal activity or is "useful as evidence of a crime." The Court clarified that officers need not know with certainty that an item is incriminating; probable cause is sufficient. 460 U.S. 742-43. Accordingly, federal investigators responding to the Murray shooting possessed ample authority to collect and preserve physical evidence reasonably related to the shooting, even before forensic testing could establish its precise evidentiary significance.

5. In *Horton v. California*, 496 U.S. 128, 130, 136-42 (1990), this Court reiterated that the plain-view doctrine does not require inadvertent discovery. When officers are lawfully present, have lawful access to an item, and its evidentiary value is immediately apparent, they may seize it even if they anticipated finding it. *Horton* thus supports the FBI's authority to obtain and preserve known categories of evidence bearing on the shooting, including firearms, clothing, and biological evidence.

6. Finally, *California v. Trombetta* holds that the government has a constitutional duty to preserve evidence whose exculpatory value is apparent before its destruction and for which comparable evidence is not otherwise reasonably available. 467 U.S. 479, 488-89 (1984). Evidence bearing directly on the circumstances of Mr. Murray's shooting, including Officer Norton's firearm, clothing, and any associated biological evidence, presented precisely the type of uniquely probative evidence whose preservation would permit later forensic examination of the events at issue. Because of the unique posture of this case, the issue is not whether any particular piece of evidence is exculpatory or inculpatory toward a particular person—it is whether the FBI had authority to seize the evidence at the crime scene. Given the levels of authority and support from decisions of this Court and the courts below, it is necessary to address whether the Fourth Amendment can be used to disclaim any responsibility or available authority to collect, control, or test evidence.

Together, these decisions establish that the FBI, as the agency responsible for investigating the shooting in Indian Country, possessed the investigative authority ordinarily attendant to that responsibility. Each of

these cases contradicts the FBI's argument, and the Court of Federal Claims agreement, that law enforcement officers at a crime scene lack the right to obtain or control evidence at the scene.

III. The Decision Below Directly Conflicts With and Diminishes Federal Investigative Authority

A. Guidance of Multiple Government Law Enforcement Agencies Establishes the Importance of and Authority to Collect Evidence at a Crime Scene

Department of Justice guidance regarding crime scene investigation outlines procedures and expectations. "Evidence at crime scenes that is in the process of documentation, collection, preservation, or packaging should be handled with attention to scene integrity and protection from contamination or deleterious change." U.S. Dep't of Just., Nat'l Inst. of Just., *Crime Scene Investigation: A Guide for Law Enforcement* 28 (2000). Instruction to "[c]onduct a careful and methodical evaluation considering all physical evidence possibilities," and to "[p]rioritize the collection of evidence to prevent loss, destruction, or contamination[,]" make clear that items such as weapons, clothing, bodies of any decedents, and possible latent evidence are crucial to determining the events of a crime. *Id.* at 26.

Further, the Law Enforcement Standards articulated in the *Indian Affairs Manual* state substantially similar language in that "[a]ll evidence related to a suspected crime is to be professionally collected, processed, handled according to chain of custody standards [. . .]." Bureau of Indian Affs., U.S. Dep't of the Interior, *Indian Affs. Manual* pt. 40, ch. 2, § 2.11 (May 5, 1999).

These directives are premised on the common-sense proposition that investigators charged with a criminal investigation must have the authority to secure and preserve significant evidence at the scene; absent that authority, the standards themselves would be largely unworkable.

B. Mere Possession of Evidence Cannot, Standing Alone, Create a Reasonable Expectation of Privacy Sufficient to Defeat Lawful Criminal Investigation

The decision below effectively treats possession of a weapon that was fired at a crime scene as the equivalent of a reasonable expectation of privacy in that weapon. Under that reasoning, an individual who happens to hold a piece of evidence may place it beyond the reach of investigators simply by retaining physical custody of it. That proposition finds no support in Fourth Amendment doctrine and is incompatible with the government's longstanding authority to investigate crime.

The Fourth Amendment protects reasonable expectations of privacy, not mere physical possession. *Katz v. United States* established that a Fourth Amendment interest exists only where a person both manifests a subjective expectation of privacy and that expectation is one society is prepared to recognize as reasonable. 389 U.S. 347, 361 (1967) (Harlan, J., concurring). Possession alone has never been enough. If it were, every custodian of evidence, every suspect holding incriminating items, and every third party temporarily exercising control over evidence could place those items beyond the reach of lawful investigation merely by refusing access.

Such a result cannot be reconciled with this Court's Fourth Amendment jurisprudence. The Court has repeatedly recognized that law enforcement may obtain and seize evidence related to criminal activity when the requirements of the Fourth Amendment are satisfied. *See supra*, *e.g.*, *Warden v. Hayden*, 387 U.S. 294, 300-10 (1967); *Horton v. California*, 496 U.S. 128, 136-42 (1990). The governing inquiry is not whether an individual happens to possess an item, but whether he possesses a legally cognizable privacy interest sufficient to prevent governmental examination or seizure of that item.

That distinction is particularly important where the possessor is not the owner of the evidence, and the evidence constitutes a central object of a death investigation. A firearm allegedly used in a fatal shooting does not become immune from examination because it is in someone's hands. Nor does temporary possession of the weapon create a reasonable expectation of privacy sufficient to prevent investigators from obtaining custody of it. To the contrary, the firearm's direct relationship to the death under investigation gives law enforcement an obvious basis to secure, preserve, and examine it as evidence.

Treating possession alone as sufficient to defeat investigative control would dramatically expand Fourth Amendment protections beyond their constitutional foundation. Under the reasoning adopted below, a non-owner who takes custody of a weapon at a crime scene could refuse to surrender the weapon for examination, and investigators would be powerless to obtain it because possession itself would create a cognizable privacy interest. The same principle would apply to blood-stained clothing, biological evidence, narcotics,

stolen property, and other material evidence, making investigative authority turn on who obtained physical possession first rather than on whether the Fourth Amendment permits seizure.

The Fourth Amendment protects legitimate privacy interests against unreasonable governmental intrusion; it does not create an evidentiary safe harbor based on physical custody alone. Although its protections are strongest in contexts such as homes and private communications, mere custody of a weapon constituting critical evidence in a death investigation bears none of those hallmarks. *See Payton v. New York*, 445 U.S. 573, 589-90 (1980); *Katz*, 389 U.S. at 351-53. The relevant question is therefore whether the possessor had a reasonable expectation of privacy sufficient to prevent federal investigators from securing and examining the weapon—not simply whether the possessor held it.

Temporary possession of the weapon should not and did not create a reasonable expectation of privacy sufficient to prevent federal investigators from securing and examining it. Holding otherwise would convert physical custody into constitutional immunity and impair the government's ability to investigate violent crimes and preserve material evidence.

C. Application of the Lower Courts' Rule Would Undermine Fundamental Principles of Criminal Investigation and Procedure

The holdings below rest on the premise that the FBI, the agency charged with investigating the death, lacked control over critical evidence at the scene, including Norton's firearm, clothing, physical person,

and even Mr. Murray's body. That conclusion necessarily assumes that Officer Jensen, despite lacking law-enforcement authority on the non-public tribal land where the shooting occurred, could take possession of Norton's firearm during an active federal homicide investigation and decline to provide it to the FBI, while Norton could similarly decline inspection or collection of his hands and clothing. In effect, possession by third parties rendered the evidence beyond the control of the investigators responsible for the investigation.

That conclusion is difficult to reconcile with established principles governing criminal investigations. Appellants are aware of no authority holding that a person lacking investigative authority at a crime scene may assume possession of critical evidence and thereby place it beyond the reach of the agency charged with investigating the crime. Nor is there authority recognizing a right to refuse surrender of material evidence to investigators conducting a lawful homicide investigation. Such a rule would substantially diminish the practical investigative authority that law enforcement agencies have long exercised in securing and preserving evidence.

Indeed, federal law generally presumes the opposite. If investigators seek possession of evidence because of its obvious evidentiary significance, federal law provides mechanisms for obtaining and preserving that evidence. The premise that the FBI lacked the practical or legal ability to secure the firearm is particularly difficult to square with federal statutes prohibiting obstruction of investigations and evidence tampering. *See* 18 U.S.C. § 1512(c), (f); *United States v. White Horse*, 35 F.4th 1119, 1121 (8th Cir. 2022), cert. denied, 143 S.

Ct. 283 (2022). In *White Horse*, the defendant concealed an item believed to be relevant to a homicide investigation and was convicted of evidence tampering.

The same logic applies to other highly probative evidence, including Norton's hands and clothing. The question is not whether federal investigators possessed authority to seek, obtain, and preserve such evidence. They plainly did. The question is instead whether evidence that was readily identifiable, known to investigators, and legally obtainable by them may nevertheless be treated as beyond their control simply because investigators elected not to obtain it. Under the control standard articulated in *Jones II*, there is no apparent basis for treating such evidence as outside the FBI's reach merely because it remained in the possession of others.

The practical implications of the rule adopted below would allow any person who obtains custody of material evidence at a crime scene to place it beyond the investigative agency's control. That result would undermine the foundational premise that investigators may secure, preserve, and examine relevant evidence and that third parties cannot remove it from the investigative process merely by taking possession.

IV. This Case is an Excellent Vehicle for Resolving the Question Presented

This case is an excellent vehicle for resolving the question presented because the courts below recognized that the FBI was responsible for investigating a shooting in Indian Country yet treated critical evidence at the crime scene as beyond its control. The record therefore squarely presents the interaction between Fourth Amendment privacy principles and the government's

authority to secure, examine, and preserve evidence. Review would thus permit this Court both to clarify the limits of any claimed Fourth Amendment privacy interest in critical evidence and to provide needed guidance regarding the scope of federal investigative authority in Indian Country, a context in which uncertainty about possession, control, and preservation carries substantial practical consequences.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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