

No. _____

IN THE
Supreme Court of the United States

KIMBERLEY ANN TEW,
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

PETITION FOR A WRIT OF CERTIORARI

Justin A. Lollman
Counsel of Record
HOFLAND/LOLLMAN
401 S. Boston Ave., Ste. 500
Tulsa, Oklahoma 74103
Telephone: 918.221.7440
Fax: 918.221.7556
jlollman@hoflandlollman.com

QUESTION PRESENTED

1. Whether a warrant authorizing officers to search an iCloud account for violations of six “extremely broad” criminal statutes (Pet. App. 31a)—including the federal conspiracy and wire-fraud statutes—is so facially overbroad as to preclude application of the *Leon* good faith exception.

PARTES TO THE PROCEEDING

Petitioner Kimberley Ann Tew was Appellant below. Respondent the United States of America was Appellee below. Non-party in this Court, Michael Aaron Tew, was Petitioner’s codefendant at trial. The Tenth Circuit consolidated their separate appeals and issued one opinion addressing both appeals—which is the opinion subject to review in this Court.

RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the United States District Court for the District of Colorado and the United States Court of Appeals for the Tenth Circuit:

- *United States v. Tew*, No. 1:20-CR-305-DDD, U.S. District Court for the District of Colorado. Judgment entered Aug. 13, 2024.
- *United States v. Tew*, Nos. 24-1333, 24-1465, U.S. Court of Appeals for the Tenth Circuit. Judgment entered Apr. 6, 2026.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
RELATED PROCEEDINGS.....	ii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISION.....	1
STATEMENT OF THE CASE.....	1
A. Factual background	1
B. District Court proceedings.....	3
C. Tenth Circuit proceedings	4
REASONS FOR GRANTING THE PETITION.....	5
I. The decision below entrenches a circuit split	5
A. The Ninth Circuit has held that no reasonable officer could rely on a warrant limited only by reference to a broad criminal statute.....	6
B. The Tenth and Eleventh Circuits have found that a reasonable officer could rely on a facially unconstitutional warrant that references a broad criminal statute.	8
II. Lower courts need guidance on whether cloud-based warrants with almost no limiting features can be relied on in good faith.	10
III. The decision below violates the Fourth Amendment.	13
A. The Tenth Circuit’s expansive reading of the good faith exception swallows the rule.	13

B. The Tenth Circuit also relied on irrelevant factors in deciding the officers relied on the warrant in good faith.....	15
IV. This case presents the ideal vehicle for reviewing these issues.	16
Appendices:	
Court of Appeals Opinion (Apr. 6, 2026)	1a
District Court Suppression Opinion (Aug. 13, 2024).....	48a

TABLE OF AUTHORITIES

Cases

<i>Groh v. Ramirez</i> , 540 U.S. 551 (2004)	14
<i>Lance v. State</i> , 560 S.E.2d 663 (Ga. 2002).....	8
<i>McDonald v. United States</i> , 335 U.S. 451 (1948)	10
<i>Membres v. State</i> , 889 N.E.2d 265 (Ind. 2008)	8, 9
<i>Olmstead v. United States</i> , 277 U.S. 438 (1928)	11
<i>Rickert v. Sweeney</i> , 813 F.2d 907 (8th Cir. 1987)	7
<i>Riley v. California</i> , 573 U.S. 373 (2014)	10, 11
<i>State v. Castagnola</i> , 46 N.E.3d 638 (Ohio 2015).....	8
<i>State v. Johnson</i> , 273 A.2d 702 (Conn. 1970)	7
<i>State v. Seader</i> , 990 P.2d 180 (Mont. 1999)	8
<i>United States v. Carpenter</i> , 585 U.S. 296 (2018)	10, 11
<i>United States v. Crozier</i> , 777 F.2d 1376 (9th Cir. 1985)	6, 7
<i>United States v. George</i> , 975 F.2d 72 (2d Cir. 1992).....	7
<i>United States v. Jones</i> , 565 U.S. 400 (2012)	10
<i>United States v. Leary</i> , 846 F.2d 592 (10th Cir. 1988)	4, 9, 14

<i>United States v. Leon</i> , 468 U.S. 897 (1984)	5, 6, 14, 16
<i>United States v. McCall</i> , 84 F.4th 1317 (11th Cir. 2023).....	12
<i>United States v. Riccardi</i> , 405 F.3d 852 (10th Cir. 2005)	16
<i>United States v. Roche</i> , 614 F.2d 6 (1st Cir. 1980).....	7
<i>United States v. Russian</i> , 848 F.3d 1239 (10th Cir. 2017)	16
<i>United States v. Smith</i> , 110 F.4th 817 (5th Cir. 2024).....	12
<i>United States v. Spilotro</i> , 800 F.2d 959 (9th Cir. 1986)	6
<i>United States v. Travers</i> , 233 F.3d 1327 (11th Cir. 2000)	8, 9
<i>United States v. Zelaya-Veliz</i> , 94 F.4th 321 (4th Cir. 2024).....	12

Constitutional and Statutory Provisions

U.S. Const. amend. IV	<i>passim</i>
18 U.S.C. § 371	2, 17
18 U.S.C. § 1343	2
18 U.S.C. § 1349	2
18 U.S.C. § 1519	2
18 U.S.C. § 1956	2
18 U.S.C. § 1957	2
28 U.S.C. § 1254(1)	1

Secondary Sources

ACLU, <i>Making Warrants Great Again: Avoiding General Searches in the Digital Age</i> (2023)	10
---	----

Steven M. Bellovin et al., <i>It's Too Complicated: How the Internet Upends Katz, Smith, and Electronic Surveillance Law</i> , 30 Harv. J.L. & Tech. 1 (2016).....	11
Orin Kerr, <i>The Digital Fourth Amendment</i> (2025)	10
Jonathan Mayer, <i>Government Hacking</i> , 127 Yale L.J. 570 (2018).....	12
Matthew Tokson, <i>The Aftermath of Carpenter: An Empirical Study of Fourth Amendment Law, 2018-2021</i> , 135 Harv. L. Rev. 1790 (2022)	16
Matthew Tokson & Michael Gentithes, <i>The Reality of the Good Faith Exception</i> , 113 Geo. L.J. 551 (2025).....	13
Miscellaneous	
<i>Chatrle v. United States</i> , Pet. for Writ of Cert., No. 25-112 (U.S. July 28, 2025).....	17
<i>Chatrle v. United States</i> , Oral Argument, No. 25-112 (U.S. Apr. 27, 2026).....	18

PETITION FOR WRIT OF CERTIORARI

Petitioner Kimberly Ann Tew respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The Tenth Circuit's opinion is reported at 171 F.4th 1210 (10th Cir. 2026). Pet. App. 1a. The district court's opinion denying Petitioner's motion for suppression is unreported. Pet. App. 48a.

STATEMENT OF JURISDICTION

The Tenth Circuit issued its decision on April 6, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION

The Fourth Amendment provides: "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

A. Factual background

Petitioner Kimberley Tew and her husband, Michael Tew, were accused of running a years-long fraud on Mr. Tew's former employer, National Air Cargo. Pet.

App. 4a. Over roughly two years, the alleged scheme drained more than \$5 million from National’s accounts. Pet. App. 5a. When the alleged scheme eventually came to the federal government’s attention, the FBI and IRS searched National’s records and landed on Mr. Tew, National’s Chief Financial Officer, and Jonathan Yioulos, National’s comptroller, as suspects. Pet. App. 3a–5a. Both men inculpated Petitioner in their proffers with the government. Pet. App. 5a–6a.

Agents applied for a search warrant to be served on Apple, Inc., compelling Apple to turn over the contents of Petitioner’s iCloud account. Pet. App. 7a. A federal magistrate judge approved the application and issued the search warrant. Pet. App. 7a.

The warrant incorporated two attachments. The first, Attachment A, identified the Apple account to be searched. Pet. App. 7a. The second, Attachment B, contained two steps. In the first step, Apple was ordered to disclose “[a]ll records or other information” identifying the account’s users and devices; the “contents of all emails” and “all instant messages” from May 2018 to September 2020; and—with no time limit—every photograph ever stored on the account and every location where the account had ever been accessed. Pet. App. 7a–8a.

In the second step, the warrant authorized the government to seize any information produced by Apple that qualified as evidence of six enumerated “Target Offenses” since May 1, 2018: 18 U.S.C. §§ 371, 1343, 1349, 1519, 1956, and 1957. Pet. App. 8a. Those statutes cover, respectively, general conspiracy, wire fraud, conspiracy to defraud the United States, records falsification, and two forms of money

laundering. The warrant specified that this information would include seven subcategories of information, set out in paragraphs (a) through (g). Pet. App. 8a. Only paragraph (a) referenced National or a scheme to defraud it. Pet. App. 8a.

B. District Court proceedings

Petitioner and her husband were tried together. Pet. App. 9a. They moved to suppress the evidence taken from Petitioner's iCloud account, arguing that the warrant was not particular enough to satisfy the Fourth Amendment. Pet. App. 12a. The district court denied the motion. Pet. App. 12a–13a. It found the warrant sufficiently particular and held, in the alternative, that the good faith exception would apply regardless. Pet. App. 13a.

The trial bore out why that ruling mattered. The government's case included text messages taken from Petitioner's Apple account showing Yioulos telling her that he had wired hundreds of thousands of dollars to third parties and a shell company, and other messages showing Petitioner sending Yioulos cryptocurrency as an apparent inducement to keep the money moving. Pet. App. 17a. At closing argument, the government pointed the jury to messages from the same account in which Michael updated Petitioner on the false invoices and the couple discussed pressuring Yioulos to embezzle still more money. Pet. App. 17a–18a.

The jury convicted Petitioner on twelve of the thirteen counts submitted against her and acquitted her on one count of money laundering. Pet. App. 18a. She was sentenced to forty-eight months' imprisonment and ordered to pay more than \$5

million in restitution. Pet. App. 19a. Her codefendant, Mr. Tew, was convicted on all fifty-nine counts against him and separately sentenced. Pet. App. 18a–19a.

C. Tenth Circuit proceedings

The Tenth Circuit affirmed. The court held that the Apple warrant violated the particularity requirement. Pet. App. 20a. The introductory clause of the seizure provision was limited only by reference to the six Target Offenses and the May 2018 start date, and the court found that limitation illusory: “[a]n unadorned reference to a broad federal statute does not sufficiently limit the scope of a search warrant,” and “there is no federal statute broader than the general conspiracy prohibition.” Pet. App. 31a (first quoting *United States v. Leary*, 846 F.2d 592, 602 (10th Cir. 1988)). In the court’s own words, this was “a very broad warrant, based upon very broad conspiracy statutes, and without sufficient guardrails.” Pet. App. 32a.

Having found the warrant unconstitutional, the court nonetheless held that the good faith exception saved it. Pet. App. 34a–35a. The court started from a presumption that the officers acted in good faith because a neutral magistrate approved the warrant and reasoned that “the warrant here did not contain the sort of glaring deficiencies that could be identified with as little as a simple glance and that overcome the presumption of validity.” Pet. App. 33a–35a. The court found that officers made some effort to particularize the warrant by describing and listing the items to be seized; by referencing the underlying criminal statutes; and by not including a catchall clause allowing them to seize any other items not enumerated. Pet. App. 35a.

The court found that four additional circumstances supported its conclusion: the executing agent had prepared other warrant applications in the same investigation; the magistrate judge had signed the application and affidavit along with the warrant; a prosecutor had reviewed the application; and agents had followed a taint protocol to avoid privileged material when reviewing the iCloud data. Pet. App. 36a–37a.

The court acknowledged that its conclusion was “a close call” and that it based its ruling in large part on the fact that the officers lacked “specific guidance on how to properly frame and limit the search and seizure of data and information from a cloud-based account to the extent it occurred in this case.” Pet. App. 37a–38a.

REASONS FOR GRANTING THE PETITION

I. The decision below entrenches a circuit split.

Federal courts of appeals are split over whether a warrant authorizing officers to search for violations of one or more broad federal statutes is so facially overbroad as to preclude application of the *Leon* good faith exception.

In *United States States v. Leon*, 468 U.S. 897 (1984), this Court held that, even where a warrant is unconstitutionally overbroad, courts need not suppress the fruits of the search if the officer acted in an objectively reasonable believe that his conduct did not violate the Fourth Amendment. *Id.* at 918. This is typically referred to as the “good faith exception” to the exclusionary rule and is justified on the basis that the “benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion.” *Id.* at 922.

“Suppression ... remains an appropriate remedy,” however, if the warrant is “so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.” *Id.* at 923.

Courts are split over whether a warrant limited only by reference to a broad criminal statute is so facially deficient that no reasonable officer could presume it valid. The conflict calls for the Supreme Court’s intervention.

A. The Ninth Circuit has held that no reasonable officer could rely on a warrant limited only by reference to a broad criminal statute.

The Ninth Circuit has held that “limiting” a search by reference only to broad criminal statutes is no limitation at all. In *United States v. Crozier*, 777 F.2d 1376 (9th Cir. 1985), the Ninth Circuit held that a reasonable officer would not rely on “a warrant that merely stated ‘Material evidence of violation 21 USC 841, 846 (Manufacture and Possession with intent to distribute Amphetamine and Conspiracy).’” *Id.* at 1382. Relying on *Crozier*, the following year the court held that the good faith exception is “inapplicable” and officers’ conduct “not reasonable” where “the warrant authorized a search for evidence of violation of thirteen broad criminal statutes.” *United States v. Spilotro*, 800 F.2d 959, 968 (9th Cir. 1986) (citing *Crozier*, 777 F.2d at 1381–82). This type of warrant, the court said, fell within *Leon*’s exception for a warrant that is “so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.” *Id.* (quoting *Leon*, 468 U.S. at 923).

The Second Circuit has followed the Ninth Circuit, albeit in dicta. The Second Circuit found that officers could not rely in good faith on a warrant that did not reference any crime because “it was quite clear when this warrant was executed that ‘limits’ to a search consisting only of a broad criminal statute were invalid,” so, “*a fortiori*, a warrant not limited in scope to any crime at all is so unconstitutionally broad that no reasonably well-trained police officer could believe otherwise.” *United States v. George*, 975 F.2d 72, 77 (2d Cir. 1992) (citing *Crozier*, 777 F.2d at 1381, among other cases).

While only the Ninth Circuit has squarely held that this reasoning forecloses good faith reliance, the premise underlying that holding—that reference to a broad criminal statute supplies no meaningful limitation—is accepted among several circuits and state courts addressing whether such warrants satisfy the Fourth Amendment’s particularity requirement in the first instance.

The First and Eighth Circuits have gone further than the Ninth and held that a “limitation” imposed by a broad statute “is no limitation at all.” See *United States v. Roche*, 614 F.2d 6, 8 (1st Cir. 1980) (holding warrant overbroad where “limitation by so broad a statute is no limitation at all”); *Rickert v. Sweeney*, 813 F.2d 907, 909 (8th Cir. 1987) (reference to general conspiracy statute and general tax evasion statutes “do not limit the search in any substantive manner,” so the warrant lacks particularity). As have several state supreme courts. See, e.g., *State v. Johnson*, 273 A.2d 702, 705 (Conn. 1970) (warrant’s reference to “any other paraphernalia which could be used to violate” the conspiracy laws overbroad because “[a] conspiracy may

exist to do a limitless variety of illegal acts”); *State v. Castagnola*, 46 N.E.3d 638, 658 (Ohio 2015) (warrant language that items “would be used to prosecute [defendant] for the crimes of retaliation, criminal trespassing, criminal damaging, and possession of criminal tools” “added nothing to narrow the search” and so failed to particularize the warrant); *State v. Seader*, 990 P.2d 180, 183 (Mont. 1999) (warrant authorizing seizure of anything of value related to drug possession “not sufficiently particular” as it “is not a generic category or general description, but a catchall phrase that encompasses everything conceivable”).

B. The Tenth and Eleventh Circuits have found that a reasonable officer could rely on a facially unconstitutional warrant that references a broad criminal statute.

With its decision below, the Tenth Circuit has now joined the Eleventh in holding that officers may rely in good faith on a warrant limited to violations of broad criminal statutes. The Eleventh Circuit first reached this result in *United States v. Travers*, 233 F.3d 1327 (11th Cir. 2000), holding the good faith exception applicable to a warrant permitting officers to search for “all documents involving real estate, litigation, property, mailings, photographs and any other material reflecting identity, and *anything reflecting potential fraud*.” *Id.* at 1330 (emphasis added).

Several state supreme courts have reached similar conclusions—though under the particularity analysis, not the good faith analysis. *See, e.g., Lance v. State*, 560 S.E.2d 663, 675–76 (Ga. 2002) (holding that warrant authorizing search for various specified items and “any other fruits of the crime of murder” sufficiently particularized because it could be “understood as limiting the search to items ... reasonably appearing to be connected to the specific crime delineated in the warrant”); *Membres v. State*, 889

N.E.2d 265, 276 (Ind. 2008) (holding warrant sufficiently particularized where it authorized a search for various items and any other “items that ‘indicate[] or tend[] to indicate a violation or a conspiracy to violate’ the Controlled Substances Act”).

The Tenth Circuit previously rejected that approach. In *United States v. Leary*, 846 F.2d 592 (10th Cir. 1988), the court held that “[a]n unadorned reference to a broad federal statute does not sufficiently limit the scope of a search warrant,” and that such a warrant is “so facially deficient” that no reasonable officer could rely on it in good faith. *Id.* at 602, 609. *Leary* thus stood for the opposite of *Travers*: a warrant limited only to violations of a broad federal statute is facially overbroad and cannot support good faith reliance.

In the decision below, the Tenth Circuit abandoned that rule. As the court itself acknowledged, the warrant here authorized officers to search Petitioner’s iCloud account for violations of any of six “extremely broad” criminal statutes—including the broadest of all, the federal conspiracy statute, “which includes in its ambit the broad array of enumerated substantive crimes.” Pet. App. 31a. “This was a very broad warrant,” the court conceded, “based upon very broad conspiracy statutes, and without sufficient guardrails.” Pet. App. 32a. Yet, despite these failings, the court nonetheless held—in a “close call” and contrary to its decision in *Leary*—that the warrant could support good faith reliance, because its “extreme breadth” wasn’t the sort of defect that “could be identified with as little as a simple glance.” Pet. App. 32a, 35a, 37a.

* * *

The decision below further entrenches a longstanding circuit split regarding application of the good faith exception to a warrant limited only to violations of a broad federal statute. The Court’s review of this issue is crucial to provide uniformity between jurisdictions and even within jurisdictions.

II. Lower courts need guidance on whether cloud-based warrants with almost no limiting features can be relied on in good faith.

As a society, we are storing increasing amounts of personal data in the cloud. Previous decisions of this Court have addressed searches of people’s homes, *McDonald v. United States*, 335 U.S. 451 (1948); the movement of their cars, *United States v. Jones*, 565 U.S. 400 (2012); their phones, *Riley v. California*, 573 U.S. 373 (2014); and their cell-site location information, *United States v. Carpenter*, 585 U.S. 296 (2018). The cloud contains all this information and more. A person’s cloud accounts often contain all emails, text messages, photos, videos, contacts, location information, and web search history that a person has ever had. That makes the information kept in cloud-based accounts more expansive than any type of warrant that has ever come before. See Orin Kerr, *The Digital Fourth Amendment* 27 (2025) (“Computers not only store private information. They also store a lot of it. These days, almost any digital device can keep a library’s worth of data. When the government searches a computer, it is not just searching the digital equivalent of a home. Instead, it is looking through a vast warehouse.”); ACLU, *Making Warrants Great Again: Avoiding General Searches in the Digital Age* 3 (2023) (explaining how “[o]nline accounts are even more extensive” than phones or computers and describing corresponding risks of warrants searching them).

Fourth Amendment doctrine must evolve to keep up with modern technology. “[T]he Court is obligated—as ‘[s]ubtler and more far-reaching means of invading privacy have become available to the Government’—to ensure that the ‘progress of science’ does not erode Fourth Amendment protections.” *Carpenter*, 585 U.S. at 320 (quoting *Olmstead v. United States*, 277 U.S. 438, 473–474 (1928)); see also *Riley*, 573 U.S. at 393 (pointing out that treating digital searches like analog ones “is like saying a ride on horseback is materially indistinguishable from a flight to the moon”—“[b]oth are ways of getting from point A to point B, but little else justifies lumping them together”). But it has fallen behind here. See Steven M. Bellovin et al., *It’s Too Complicated: How the Internet Upends Katz, Smith, and Electronic Surveillance Law*, 30 Harv. J.L. & Tech. 1, 3 (2016) (discussing “the urgent need for the development of new rules and principles capable of regulating law enforcement access to Internet communications data”). As the court below recognized: “[O]ur Fourth Amendment doctrine lags behind the technological advances that allow for integrated and cloud-based storage of massive amounts of personal data. Which is to say, there is still little precedential authority expounding on the unique challenges raised by such warrants.” Pet. App. 22a.

Courts are unprepared to address warrants for cloud-based technology. They are confused about how officers are supposed to particularize a warrant for an account containing such expansive information. See, e.g., Pet. App. 38a (“[N]either the parties nor this court uncovered an opinion that provided specific guidance on how to properly frame and limit the search and seizure of data and information from a cloud-

based account to the extent it occurred in this case.”); *United States v. McCall*, 84 F.4th 1317, 1324 (11th Cir. 2023) (“[T]echnology moves quickly, the law moves slowly, and the combination can leave law enforcement officers with little insight on how to investigate a cloud account.”); *see also* Jonathan Mayer, *Government Hacking*, 127 Yale L.J. 570, 620–21 (2018) (“Courts are already struggling with how probable cause and particularity apply to the information that government agents collect from a suspect’s device or cloud service account.” (emphasis omitted)).

Courts have been holding that officers have relied in good faith on extremely broad warrants for cloud-based and other online accounts. *See* Pet. App. 35a (officers relied on good faith on warrant that was “limited” only by reference to broad categories of information and broad criminal statutes); *United States v. Zelaya-Veliz*, 94 F.4th 321, 340–41 (4th Cir. 2024) (officers relied in good faith on warrant for Facebook account that contained no temporal limitation); *McCall*, 84 F.4th at 1328 (holding that officers relied in good faith on warrant for iCloud account that “allowed a search of all the conceivable data on the account without any meaningful limitation”). The justification for this incredible lenience is that the technology involved is new. *See Zelaya-Veliz*, 94 F.4th at 341 (“[C]ourts should not punish law enforcement officers who are on the frontiers of new technology simply because they are at the beginning of a learning curve and have not yet been apprised of the preferences of courts on novel questions.” (citation omitted)); *United States v. Smith*, 110 F.4th 817, 840 (5th Cir. 2024) (adopting more lenient good faith analysis where officers were using “a cutting-edge investigative technique” and there was a “dearth of court precedent”).

Without this Court’s intervention, a vicious cycle is developing whereby courts allow officers leeway to conduct overbroad searches using new warrants for cloud accounts, so no caselaw develops showing officers how to limit such warrants and officers continue to be justified in writing warrants with no significant limiting features. *See* Matthew Tokson & Michael Gentithes, *The Reality of the Good Faith Exception*, 113 Geo. L.J. 551, 568–69 (2025) (describing the vicious cycle that develops when courts avoid deciding the underlying substantive issue, slowing the development of the law and leaving parties without recourse in subsequent Fourth Amendment disputes).

This vicious cycle must be stopped in its tracks. The Court should settle the question of whether a warrant for a cloud-based account whose only limiting features are specifying broad categories of data and referring to broad criminal statutes is so broad that no reasonable officer could rely on it.

III. The decision below violates the Fourth Amendment.

A. The Tenth Circuit’s expansive reading of the good faith exception swallows the rule.

The Tenth Circuit correctly recognized that the warrant here violated the Fourth Amendment by failing to be particularized enough. Pet. App. 32a–33a. But it then held that officers relied on it in good faith for all the reasons it was not sufficiently particularized. Pet. App. 35a. This expansive reading of the good faith requirement renders the underlying Fourth Amendment protection a nullity.

The Tenth Circuit misstated the correct standard, which threw off the rest of its analysis. The court stated that “the warrant here did not contain the sort of glaring

deficiencies that could be identified with as little as a simple glance.” Pet. App. 35a. That is not the standard for the good faith exception. This appears to be a misreading of a line from *Groh v. Ramirez*, 540 U.S. 551 (2004), in which this Court denied qualified immunity to officers who relied on a warrant where “even a cursory reading of the warrant in this case—perhaps just a simple glance—would have revealed a glaring deficiency that any reasonable police officer would have known was constitutionally fatal.” *Id.* at 564.

Certainly, a reasonable officer would not rely on a warrant that is obviously unconstitutional from a simple glance—but that is not to say that *all* a reasonable officer would do is take a cursory glance at a warrant. Rather, the standard is a “reasonably well trained officer,” who has “a reasonable knowledge of what the law prohibits,” who would surely have been trained to read a warrant rather than just glance at it. *Leary*, 846 F.2d at 607 (quoting *Leon*, 468 U.S. at 919 n.20). The good faith exception has a higher bar than glaring deficiencies identifiable in a simple glance.

Relying on this principle, the Tenth Circuit found that officers relied on the warrant in good faith because it “described and listed the items to be seized”; referenced criminal statutes; and did not include a catchall provision allowing for the seizure of “any other information.” Pet. App. 35a. But no reasonable officer would have thought these provisions limited the warrant in any meaningful way. The “items” listed in the warrant gave officers access to all “emails, text messages, files, photos, location data, and records showing which apps she used, not only for a single

cell phone, but for every device that she used to access the Apple account”—in other words, everything the warrant could conceivably reach. Pet. App. 24a. The criminal statutes included conspiracy under 18 U.S.C. § 371, which is, as the court itself recognized, the broadest criminal statute in existence. Pet. App. 31a (recognizing that there is “no federal statute broader than the general conspiracy prohibition.”). Finally, the lack of a catchall does not move the needle, given that the warrant already authorized a search of every piece of data the iCloud account could possibly contain. In other words, the Court lowered the standard of “reasonable” so far as to be practically meaningless. In doing so, it erred.

B. The Tenth Circuit also relied on irrelevant factors in deciding the officers relied on the warrant in good faith.

The Tenth Circuit also considered four other factors it believed weighed in favor of not suppressing the warrant: (1) the officer who executed the search had prepared other warrants in the same investigation, (2) the magistrate judge who signed the warrant also signed the application and affidavit, (3) a prosecutor reviewed the warrant, and (4) the officers followed a protocol to avoid learning privileged information. Pet. App. 36a–37a. The first and fourth of these factors provide no support for the conclusion that officers acted in good faith, and the Tenth Circuit erred in considering them.

First, it is irrelevant that the officer who executed the search wrote *other* affidavits in the same investigation. Courts have held that where the same officer prepared the warrant application and supporting affidavit also executed the search, that cuts in favor of good faith because the officer would have knowledge of the application and

affidavit's limits. *See United States v. Russian*, 848 F.3d 1239, 1246 (10th Cir. 2017); *United States v. Riccardi*, 405 F.3d 852, 864 (10th Cir. 2005). This rationale does not apply to an officer who drafted a different warrant for the same investigation: the same knowledge of *this* warrant's limits cannot be imputed to her.

Second, the fact that officers avoided violating the Sixth Amendment by learning attorney-client privileged information during their search does nothing to show that the warrant did not violate the Fourth Amendment. These are two separate constitutional amendments, and an officer's effort not to violate one does not establish that the officer did not violate the other. Whatever efforts officers made to avoid violating other constitutional provisions are irrelevant to whether they reasonably attempted to particularize the warrant.

IV. This case presents the ideal vehicle for reviewing these issues.

The Court is unlikely to find a better vehicle to resolve the issue presented by this case: Whether a warrant authorizing officers to search an iCloud account for violations of six extremely broad criminal statutes is so facially overbroad as to preclude application of the *Leon* good faith exception.

First, the application of the good faith exception to a cloud-based warrant was outcome dispositive. The Tenth Circuit decided that the warrant was overbroad, meaning its decision turned on the good faith issue. This is an unusual posture, given the number of courts that skip the substantive Fourth Amendment analysis to decide good faith. *See* Matthew Tokson, *The Aftermath of Carpenter: An Empirical Study of Fourth Amendment Law, 2018-2021*, 135 Harv. L. Rev. 1790, 1796 & n.33 (2022) (finding that “good faith exception cases make up a remarkably high proportion of all

post-Carpenter cases—36.1% of this author’s dataset). The Fourth Amendment good faith issue was outcome-dispositive for the entire trial too: the information seized pursuant to the warrant for Petitioner’s iCloud account was a central part of the government’s case, without which the jury would not likely have convicted Petitioner. *See* Pet. App. 17a–18a.

Second, the relevant facts are undisputed. Both parties agree with what the warrant said. The only issue is the legal analysis: whether officers could rely on that warrant in good faith.

Third, the good faith issue in this case was discussed extensively. Petitioner fully preserved the issue and argued it comprehensively at the Tenth Circuit. The Tenth Circuit’s published decision considered the issue in depth. The issue has been well presented for this Court to review.

We are mindful that this Court recently denied review of a question about the scope of the good faith exception in *Chatrie v. United States*, when it granted review only of the petition’s underlying Fourth Amendment question about the constitutionality of a geofence warrant, and declined to grant review of the question of whether officers could rely on that warrant in good faith. *See Chatrie v. United States*, No. 25-112, Pet. for Writ of Cert. at i (July 28, 2025).

This case presents an entirely cleaner vehicle to consider this issue than *Chatrie* did: in *Chatrie*, the most obvious solution would be for the Court to remand the good faith issue for the Fourth Circuit to opine on it in the first instance. *See id.* at 34 (recognizing that the Court could remand the good faith question). Here, on the other

hand, the Tenth Circuit has already decided the good faith issue. Not only that, but its decision hinged on that issue. At oral argument in *Chatrie*, Justices expressed interest in the good faith issue even though the Court had denied review of it. *Chatrie v. United States*, Oral Arg. at 15–20 (Apr. 27, 2026). This case presents the perfect opportunity for the Court to consider the good faith issue within an appropriate vehicle, when doing so would be outcome-determinative for the case.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition.

Dated: July 31, 2026

Respectfully submitted,

/s/ Justin A. Lollman

Justin A. Lollman

Counsel of Record

HOFLAND/LOLLMAN

401 S. Boston Ave., Ste. 500

Tulsa, Oklahoma 74103

Telephone: 918.221.7440

Fax: 918.221.7556

jlollman@hoflandlollman.com