

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ISAIAH PINKERTON,
Petitioner

v.

STATE OF RHODE ISLAND,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE RHODE ISLAND SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether probable cause that a person committed a crime supports a warrant for historical cell-site location information for a phone number the government asserts was used by that person, absent facts to support that assertion?
2. Whether consent to a warrantless DNA swab may be voluntary under the totality of the circumstances when police falsely tell a person that he is required to submit?

PARTIES TO THE PROCEEDINGS

Petitioner Isaiah Pinkerton (defendant-appellant below) and Respondent State of Rhode Island (plaintiff-appellee below) were the sole parties before the Rhode Island Supreme Court and the state trial court in these criminal proceedings.

RELATED PROCEEDINGS

State v. Pinkerton, No. P1-2022-3059BG (R.I. Super. Ct.) (judgment entered Feb. 6, 2024).

State v. Pinkerton, No. SU-2024-0104-C.A., 355 A.3d 1051 (R.I. 2026) (conviction affirmed May 19, 2026; reargument denied June 11, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Isaiah Pinkerton respectfully petitions for a writ of certiorari to review the judgment of the Rhode Island Supreme Court.

OPINIONS BELOW

The opinion of the Rhode Island Supreme Court in *State v. Pinkerton* is reported at 355 A.3d 1051 (R.I. 2026), and reproduced at Pet. App. 1a. The Rhode Island Superior Court's decision denying both of Mr. Pinkerton's motions to suppress is unpublished but available at 2023 WL 4108468 (R.I. Super. Ct. June 14, 2023), and reproduced at Pet. App. 19a.

JURISDICTION

The Rhode Island Supreme Court issued its opinion on May 19, 2026, and denied Mr. Pinkerton's request for rehearing on June 11, 2026. Petitioner has timely filed this petition. The Court has jurisdiction under 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISION

Fourth Amendment of the United States Constitution

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

A. Introduction

This petition presents two Fourth Amendment issues warranting this Court's review. Both arise from the investigation that led to Isaiah Pinkerton's conviction for murder for a drive-by shooting in Providence, Rhode Island.

The first concerns what the probable-cause standard requires when the government seeks to track a person's past movements. In *Carpenter v. United States*, this Court held that the acquisition of historical cell-site location information (CSLI) is a search requiring a warrant supported by probable cause. 585 U.S. 296, 316 (2018). Warrants for historical location information are now commonplace in criminal investigations, with wireless carriers processing tens of thousands each year. But this Court has never addressed what a warrant affidavit must establish when the government seeks CSLI for a phone number on the stated basis that the phone number was used by a suspect.

That question is squarely presented here. The affidavit asserted that police had "learned" Mr. Pinkerton used the target phone number but presented no facts supporting that assertion. Although the affidavit established probable cause to believe Mr. Pinkerton was involved in the shooting, nothing in the affidavit connected him to the phone number. The Rhode Island Supreme Court nevertheless upheld the warrant for five months of historical location information.

The approach below conflicts with this Court's probable cause decisions. In *Illinois v. Gates*, this Court made clear that "[s]ufficient information must be

presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.” 462 U.S. 213, 239 (1983). Yet that is what the decision below permits: a search of months of historical location information based on a single bare conclusion about the target phone number. As the dissent below observed, “[t]he majority’s decision here allows the police and state to gain access to anyone’s data as long as they baldly represent that their investigation supports doing so.” Pet. App. 15a.

The privacy consequences of the majority’s decision are substantial. The dissent identified this threat: “Based on the information contained within Det. Michael’s warrant application, any number could have been swapped out for the 7836 one—including yours or mine.” *Id.* The danger is not theoretical. Indeed, this warrant swept up weeks of location information belonging to an uninvolved third party who had the misfortune of being assigned the target phone number by T-Mobile.

The second question concerns whether consent can be voluntary under the totality-of-the-circumstances test even when police falsely tell a person that he has no right to refuse. Although voluntariness turns on “the totality of all the circumstances,” *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973), *Schneckloth* preserved this Court’s rule that consent is not voluntary when it is “no more than acquiescence to a claim of lawful authority.” *Bumper v. North Carolina*, 391 U.S. 543, 548–49 (1968).

Here, police sought Mr. Pinkerton’s consent to a DNA swab while he was handcuffed to the wall of an interrogation room. When Mr. Pinkerton asked, “So we

all gotta do this?” the detective answered, “Yeah.” Pet. App. 12a. The Rhode Island Supreme Court held his consent was voluntary under the totality of the circumstances without considering whether his submission was instead acquiescence to the officer’s assertion of authority.

This decision cannot be reconciled with *Bumper*. The detective’s false answer here conveyed what the claim of a warrant conveyed there: that Mr. Pinkerton had no right to refuse the search. Two justices dissented below on this ground. One justice concluded that the detective’s “unambiguous but completely false response” that the petitioner was required to submit “should *in and of itself*” require suppression. *Id.* (emphasis in original). The other dissenter found that the detective’s “false assertions” “vitiating” the petitioner’s “ability to freely consent.” *Id.* at 16a.

The ramifications extend beyond this case. Police routinely rely on consent as an investigative tool, and the decision below permits courts to find consent voluntary even when police misrepresent that compliance is mandatory.

This petition should be granted.

B. CSLI Warrant

1. Background

For months, the police had no leads in the August 1, 2021 killing of twenty-four-year-old Miya Brophy-Baermann in Providence. The two issues presented relate to the police investigation.

The first pertains to a CSLI warrant. The Fourth Amendment provides that “no Warrants shall issue, but upon probable cause.” U.S. Const. amend. IV. In *Illinois*

v. Gates, this Court held that the issuing magistrate must “make a practical, common-sense decision” based on “all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information” as to whether “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Gates*, 462 U.S. at 238. A reviewing court must “ensure” that the magistrate had a “substantial basis” for concluding that probable cause existed. *Id.* at 238–39. *Gates* also requires that “[s]ufficient information must be presented” to the magistrate to allow them to make a probable cause determination. *Id.* at 239. The magistrate’s determination “cannot be a mere ratification of the bare conclusions of others.” *Id.*

The warrant here was issued for the CSLI records of (401) 771-7836 and (401) 648-5211, belonging to unknown subscribers on the T-Mobile USA Network. Pet. App. 35a.¹ It was signed by a district court judge of the State of Rhode Island on January 14, 2022. *Id.* The warrant authorized the acquisition of CSLI for a five-month period from July 1, 2021, to December 1, 2021. *Id.*

The eight-page affidavit, which was signed by a Providence Police detective, described the detective’s experience, including his training and experience related to cell phone forensics. *Id.* at 37a, 41a–43a. The affidavit also included facts implicating Mr. Pinkerton in the August 1, 2021 shooting, including a description of a December

¹ The petitioner lacked standing to challenge the probable cause to search the 5211 number, which ultimately belonged to the co-defendant’s girlfriend. That said, no facts in the affidavit connected the 5211 number with evidence of the murder, either.

2021 traffic stop of Mr. Pinkerton and two others. *Id.* at 39a–40a. The affidavit explained that the traffic stop resulted in a discovery of a gun that was allegedly consistent with shell casings recovered from the shooting; the affidavit further alleged that DNA found on the gun was consistent with a DNA reference profile obtained from Mr. Pinkerton. *Id.*

But the affidavit alleged no facts to show that evidence of the shooting would be found in the 7836 cellular records. No articulable facts connected Mr. Pinkerton to the (401) 771-7836 number or that number to the murder. Rather, the affidavit merely stated, in conclusory language, that the police “learned” that Mr. Pinkerton used the (401) 771-7836 number: “Through the investigation it was learned that Isaiah Pinkerton also utilized the mobile number of 401-771-7836 through the T-Mobile USA Network that was NOT known by the Providence Police initially.” *Id.* at 40a.

This unsupported assertion was echoed at the end of the affidavit, where the affiant requested the records “for the mobile number of [Isaiah] Pinkerton in 401-771-7836.” *Id.* at 43a. These statements were the only mention of that phone number in the entire affidavit.

The affidavit included information about other numbers besides the target phone numbers. For example, the affidavit explained how Mr. Pinkerton gave the police two phone numbers in December 2021. *Id.* at 40a. And the affidavit described how Shawn Mann—Mr. Pinkerton’s co-defendant—was tied to a certain phone number. *Id.* The affidavit also described how Shawn Mann’s number appeared in a

tower dump nearby the murder scene at the relevant time. *Id.* The affidavit contained no allegation that the 7836 number appeared in a tower dump.

T-Mobile produced the location records after receiving the warrant, including almost three weeks of location data belonging to an innocent third party who was unconnected to this case. *Id.* at 15a.

2. Proceedings Below

Mr. Pinkerton moved to suppress the fruits of this warrant under the Fourth Amendment of the United States Constitution, arguing that there was no probable cause that evidence of the murder would be found in this location data. The Rhode Island Superior Court judge denied Mr. Pinkerton's motion in a written decision. Pet. App. 26a. The phone records—including the innocent third party's location data—were introduced at trial. *Id.* at 15a. Mr. Pinkerton was convicted after a jury trial and appealed to the Rhode Island Supreme Court, arguing that the trial judge erred by denying the motion to suppress the CSLI records. *Id.* at 7a.

The Rhode Island Supreme Court affirmed on this issue, 4-1. *Id.* at 1a. The majority acknowledged that the affidavit's only direct connection between Mr. Pinkerton and the 7836 number was an assertion that the police had learned through their investigation that he had used that number. *Id.* at 8a. It nevertheless concluded that Mr. Pinkerton's "attention to this single sentence [was] misplaced" because probable cause must be assessed based on the totality of the circumstances in the affidavit. *Id.*

The majority ultimately held that because there were facts connecting Mr. Pinkerton to the shooting, the trial judge did not err in denying the motion to suppress. “[I]t is our opinion that when viewed in its totality, the affidavit specifically implicates defendant in Brophy-Baermann’s murder and that the trial justice did not err when he concluded the District Court judge drew reasonable inferences from the affidavit and determined there was sufficient probable cause to obtain the cell phone records associated with (401) 771-7836.” *Id.* at 8–9.

In reviewing the totality of the circumstances, the majority emphasized facts in the affidavit unrelated to the cell phone number, including the detective’s experience and the evidence implicating Mr. Pinkerton in the murder. *Id.* The majority also relied on *Gates* for the observation that, in assessing the reliability of an informant’s tip, “a deficiency in one [reliability consideration] may be compensated for . . . by a strong showing as to the other [reliability consideration], or by some other indicia of reliability.” *Id.* at 8a (quoting *Gates*, 462 U.S. at 233). Although the majority recognized that the affidavit did not cite an informant, it concluded by analogy that the affidavit, viewed in its totality, supported the issuing judge’s probable cause determination. *Id.* at 8a–9a. The majority further relied on a Rhode Island case, *State v. Byrne*, for the proposition that “a nexus between the items to be seized and the place to be searched does not rise or fall . . . on the existence of underlying facts connecting the two.” *Id.* at 9a (quoting *State v. Byrne*, 972 A.2d 633, 642 (R.I. 2009)).

Rhode Island Supreme Court Associate Justice Melissa A. Long dissented. Reviewing the affidavit, she concluded that the detective “did not supply even a single fact connecting the 7836 number either to Mr. Pinkerton or to the location and time of the crime.” *Id.* at 14a. The dissenting opinion compared the lack of facts about the 7836 number to the affidavit’s treatment of the co-defendant’s phone number. *Id.* As to the co-defendant’s phone number, the affidavit explained that he provided that specific phone number to police and that it appeared in a tower dump near the murder scene at the time of the murder. *Id.* As Justice Long explained, “[t]hose facts therefore connected (1) Mr. Mann to a phone number and (2) that phone number to the approximate time and location of the murder,” which provided a fair probability that evidence of the shooting would be found in that location data. *Id.*²

In contrast, the affidavit’s “conclusory assertion” that “[t]hrough the investigation it was learned that Isaiah Pinkerton also utilized the mobile number of 401-771-7836” was a bare conclusion under *Gates*, not a fact from which the issuing judge could independently determine probable cause. *Id.* at 13a–14a. The dissent further found that the affidavit supplied no facts from which an issuing judge could assess the “veracity, reliability, basis of knowledge, or any other indicia of reliability” underlying the assertion that Mr. Pinkerton used the number. *Id.* at 14a. Justice Long “struggle[d] to see how this solitary, vague pronouncement that Mr. Pinkerton ‘utilized’ a mobile phone number could fulfill” the *Gates* probable-cause standard. *Id.*

² Mr. Mann’s CSLI was not a target of the search warrant, however.

Justice Long was also disturbed by the privacy consequences of both this particular warrant and the decision in general. The dissent pointed out that the bare-bones warrant had revealed weeks of location data of an uninvolved private individual:

I am greatly troubled that the fruits of this warrant revealed the extensive data of a private individual not involved whatsoever in this case. This individual's name was revealed at trial, and their cell site location data, tracking almost three weeks of their detailed geographic movements, was included as a full exhibit introduced by the state at trial. This is deeply disturbing.

Id. at 15a. Citing *Carpenter*, Justice Long further explained the implications of the decision for all phone users and their location data:

Based on the information contained within Det. Michael's warrant application, any number could have been swapped out for the 7836 one—including yours or mine. The majority's decision here allows the police and the state to gain access to anyone's data as long as they baldly represent that their investigation supports doing so. Given the “deeply revealing nature of [cell site location information], its depth, breadth, and comprehensive reach, and the inescapable and automatic nature of its collection,” I would hope that this Court would take greater care in allowing police to gather such data. *Carpenter v. United States*, 585 U.S. 296, 320, 138 S. Ct. 2206, 201 L.Ed.2d 507 (2018); *see also State v. Sinapi*, 295 A.3d 787, 802-03 (R.I. 2023) (acknowledging the grave privacy concerns associated with cell phone data). That an uninvolved party's data was not only collected as a result of this warrant but also presented at trial should demonstrate the stakes of an improperly substantiated warrant application. This suggests all the more strongly to me that the granting of the warrant application and the refusal to suppress the cell phone records were error.

Id. Neither the majority nor the dissent addressed the state’s arguments on the good-faith exception, although Justice Long noted that “the facts in the record suggest an absence of good faith when, as here, the affidavit was ‘so lacking in indicia of probable cause [to search the 7836 number] as to render the official belief in its existence entirely unreasonable.’” *Id.* at 14a n.1 (quoting *United States v. Leon*, 468 U.S. 897, 923 (1984)).

C. Warrantless DNA Swab

1. Background

About a month before the CSLI warrant issued, Mr. Pinkerton was subjected to a warrantless buccal swab after a detective falsely told him he had to submit to it. The evidence derived from the swab was included in the CSLI warrant affidavit; it was also introduced at trial.

A buccal swab is a search under the Fourth Amendment. *Maryland v. King*, 569 U.S. 435, 446 (2013). A warrantless search may nevertheless be reasonable when a person voluntarily consents. *Schneckloth*, 412 U.S. at 219. The prosecution bears the burden of proving consent was voluntary, which is determined from a totality of the circumstances. *Id.* at 222, 227. Consent is not voluntary when it is the product of coercion. *Id.* at 228.

This Court has also held that acquiescence to a claim of lawful authority is not voluntary consent. *Bumper*, 391 U.S. at 548–50. In *Bumper*, officers told the defendant’s mother they had a warrant to search her house; at the hearing on the motion to suppress, however, the state did not produce the warrant. *Id.* at 546–47 &

n.7. This Court ruled that her consent was not voluntary because the officer had effectively stated that she had “no right to resist the search.” *Id.* at 550. By claiming authority to search, the officer eliminated her ability to freely choose, rendering her consent invalid. *Id.*

This Court reiterated that principle in *Schneckloth*, citing *Bumper* for the proposition that consent is not voluntary when it is “granted only in submission to a claim of lawful authority.” *Schneckloth*, 412 U.S. at 233. As this Court explained, “no matter how subtly the coercion was applied, the resulting ‘consent’ would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed.” *Id.* at 228.

Here, the sequence of events began when Providence police stopped a car in which Mr. Pinkerton was a backseat passenger on December 12, 2021. Pet. App. 4a. Police found a gun on the side of the road along the car’s route. *Id.* Mr. Pinkerton and the two other occupants were transported to the police station. *Id.* Mr. Pinkerton was then placed in an interrogation room and handcuffed to a wall while he was questioned by two detectives. *Id.* at 9a.

The interrogation was video recorded. *Id.* at 10a. The questioning began about an unrelated murder. *Id.*³ Then the detective told Mr. Pinkerton there was a gun “in

³ The transcript of Mr. Pinkerton’s recorded interrogation was marked as Defendant’s Exhibit C for identification at the suppression hearing and was included in the appendix filed in Mr. Pinkerton’s direct appeal, available on the Rhode Island Supreme Court docket in SU-2024-0104-C.A. References to the transcript are cited as “Def.’s Ex. C.”

your car that you guys got knocked off in.”⁴ Def.’s Ex. C at 7. Mr. Pinkerton denied knowledge of a gun in the car. *Id.* At that point the detective said, “[Y]ou’re gonna take a buccal right,” and then told Mr. Pinkerton, “I’m gonna have you sign for a buccal swab.” Pet. App. 10a. Mr. Pinkerton responded, “Huh?” and then asked, “What’s that?” *Id.* The detective stated that it was “[t]o make sure there’s no DNA on that gun.” *Id.* Mr. Pinkerton replied, “Oh, you can do—all right. All right, f***ing, yeah.” *Id.*

The detective then handed Mr. Pinkerton the consent form. *Id.* The form indicated that he had “been informed of [his] right not to have a search made of my persons without a search warrant and of my right to refuse to consent to such a search.” *Id.* at 11a. The detective conceded at the suppression hearing that he never advised Mr. Pinkerton of that right. *Id.* at 10a.

Mr. Pinkerton turned his head down to the form and began to read but was “interrupted roughly seven seconds later” by the detectives asking him about an unrelated matter. *Id.* at 16a. After answering their questions, Mr. Pinkerton returned to the form and “almost immediately expressed confusion again,” asking, “[W]ait, what is this right here[?]” *Id.* The detective responded that officers were “gonna come and get . . . your DNA” and directed Mr. Pinkerton where to sign. *Id.* Mr. Pinkerton had not yet signed the form. *Id.*

⁴ After Mr. Pinkerton signed the form, the detective stated that the gun was not in the car and had been “dumped.” Def.’s Ex. C. at 18.

Mr. Pinkerton then asked, “So we all gotta do this?” and the detective answered, “Yeah. The other guys are gonna do it too.” *Id.* When Mr. Pinkerton hesitated, the detective added, “I’m gonna try to get you out, man.” *Id.* Mr. Pinkerton signed the form. *Id.* He was swabbed about ten minutes later. *Id.* at 11a.

2. Proceedings Below

Mr. Pinkerton moved to exclude the DNA evidence before trial, arguing that the swab was taken in violation of the Fourth Amendment. *Id.* at 5a. At the hearing in Rhode Island Superior Court, the state called the detective who interrogated Mr. Pinkerton. *Id.* at 6a. The video and consent form signed by Mr. Pinkerton were introduced by the state. *Id.* at 11a & n.5. The trial judge denied the motion in a written decision. *Id.* at 23a. At trial, the state introduced evidence that DNA recovered from the discarded gun was consistent with Mr. Pinkerton’s DNA profile. *Id.* at 4a.

On appeal to the Rhode Island Supreme Court, Mr. Pinkerton argued that the Superior Court judge erred by finding that consent had been voluntary. The Rhode Island Supreme Court affirmed on this issue in a split decision, 3-2.

The majority held that the state had established voluntary consent under the totality of the circumstances. *Id.* at 9a–10a. The majority identified three moments that it categorized as “expressions of consent.” *Id.* at 11a. The first was an initial willingness before Mr. Pinkerton asked about whether he had to submit to the buccal swab. *Id.* at 10a–11a. The second and third—signing the form and physically submitting to the swab—occurred after the detective’s false assertion. *Id.*

Although the majority recounted the exchange in which Mr. Pinkerton asked, “So we all gotta do this?” and the detective responded, “Yeah,” it determined that because Mr. Pinkerton had not testified at the suppression hearing, there was no evidence that Mr. Pinkerton understood that statement to mean he had to submit. *Id.* at 11a. The majority reasoned that finding his will had been overborne would therefore require the court to “speculate.” *Id.* Instead, the majority emphasized that the interrogation was nonconfrontational, and that Mr. Pinkerton appeared comfortable, knew the detective, was familiar with the criminal-justice system, and had previously waived his *Miranda* rights. *Id.* at 10a.

Two justices separately dissented on this issue. Associate Justice William P. Robinson III concluded that the consent was not free and voluntary, that the “false information provided to Mr. Pinkerton by the detective directly related to Mr. Pinkerton’s Fourth Amendment rights,” and that the error was “sufficiently grave” to require a new trial. *Id.* at 12a. To him “the crucial and dispositive point” occurred as Mr. Pinkerton was “in the process of deciding whether or not he should sign the consent form.” *Id.* Justice Robinson found that Mr. Pinkerton’s query was a “legitimate question as to whether or not he was required to submit to a buccal swab,” and that the detective’s response was “immediate and unqualified,” “unambiguous,” and “completely false.” *Id.*

Per Justice Robinson, this “unequivocal and never altered false response” should “*in and of itself*” require suppression. *Id.* (emphasis in original). And

considered against the totality of the circumstances, the false response made it “even more evident” that the purported consent was not voluntary. *Id.*

Justice Long separately dissented. After closely reviewing the entire exchange, she found it “inescapably clear” that Mr. Pinkerton had not voluntarily consented. *Id.* at 15a. In her view, the trial justice erred by failing to address the detective’s “false and constitutionally inaccurate statements.” *Id.* at 15a. She emphasized that the detective never told Mr. Pinkerton he could refuse, only “falsely and affirmatively suggest[ing]” that signing was compulsory. *Id.* Reviewing the video, “it was clear to [her] that [Mr. Pinkerton] signed the form in response to Det. Michael’s false assertions that he was obligated to do so.” *Id.* at 16a.

Relying on *Bumper*, 391 U.S. at 543, Justice Long found that the Fourth Amendment was violated when the detective affirmatively misrepresented the scope of his authority while obtaining consent to the swab. Pet. App. 16a. She concluded that the state had failed to meet its burden of showing consent was freely and voluntarily given:

Framed generously, Det. Michael’s statements misrepresented the bounds of his lawful authority and Mr. Pinkerton’s right to refuse consent. More likely, they suggest loose regard for constitutional imperatives by the same detective who vaguely pronounced that Mr. Pinkerton utilized the 7836 number in an attempt to demonstrate probable cause in the previously discussed warrant application. I cannot in good faith agree with the trial justice’s conclusion that the state met its burden in proving that Mr. Pinkerton’s consent was voluntarily and freely given. I believe that Det. Michael’s statements improperly induced Mr. Pinkerton into signing the form at the point in the exchange when he still did not understand the purpose or consequences of the swab. In doing so, Det. Michael

vitiating Mr. Pinkerton's ability to freely consent and, accordingly, violated the Fourth Amendment and article 1, section 6. As such, I conclude that the trial justice erred in denying Mr. Pinkerton's motion to suppress the results of the buccal swab.

Id. at 16a. As Justice Long also observed, "we have certainly never held that police may lie to a suspect about their constitutional rights." *Id.* at 16a n.3.

REASONS TO GRANT THE PETITION

I. This Court should grant review of the first question.

This Court has never addressed what probable cause requires when the government seeks historical CSLI to track a suspect's past movements, even though tens of thousands of these warrants are issued every year. The Rhode Island Supreme Court held that a bare assertion that a particular suspect used a phone number, coupled with probable cause that he committed a crime, was sufficient to obtain that number's historical location data. That holding permits the government to obtain a person's detailed location history without facts establishing that the location data sought belongs to the suspect at all. This issue has significant privacy consequences, with Rhode Island's approach leading to the acquisition of an innocent individual's detailed location information.

A. Lower courts and issuing magistrates require guidance on this recurring issue.

This Court has not addressed what probable cause requires when the government seeks historical CSLI for a phone number attributed to a suspect. And it has not decided whether that attribution may rest on a conclusory assertion when

the affidavit otherwise establishes probable cause that the suspect committed the crime. This is a recurring issue that merits review.

This Court’s probable-cause framework establishes the principles but does not answer the question. *Illinois v. Gates* instructs lower courts to assess probable cause under the totality-of-the-circumstances standard, permitting issuing judges to draw reasonable inferences from the facts presented. 462 U.S. at 238–40. Probable cause exists when the totality of the circumstances establishes a “fair probability” that contraband or evidence of a crime will be found in the place the warrant identifies. *Id.* at 238. A reviewing court must ensure that the magistrate had a “substantial basis” to make an independent probable cause determination and did not merely “ratif[y]” an officer’s “bare conclusions.” *Id.* at 239. But *Gates* does not address what showing is required to connect a suspect to the particular place the government seeks to search.

Nor has this Court answered the question in its decisions addressing historical location information. *Carpenter* and *Chatrie v. United States*, 609 U.S. ___, 146 S. Ct. 2193 (2026), recognized the privacy interests at stake in the acquisition of historical location data but did not address the application of the probable-cause standard. In *Carpenter*, this Court held that the government’s acquisition of historical CSLI is a search under the Fourth Amendment. 585 U.S. at 316–17. This Court therefore held that the “Government must generally obtain a warrant supported by probable cause before acquiring such records.” *Id.* at 316. And in *Chatrie*, this Court reaffirmed that government acquisition of historical location information constitutes a Fourth

Amendment search. 146 S. Ct. at 2219. But neither of these cases supplied the rule needed to resolve the question presented here.

That unresolved question has practical significance for courts issuing and reviewing CSLI warrants. In contrast to Rhode Island, some courts confronting the issue have required a factual basis for connecting the suspect to the targeted phone. In *State v. Evans*, for example, the Supreme Court of Connecticut held that an affidavit provides a substantial basis for finding probable cause to obtain historical CSLI when it establishes *both* probable cause that the suspect committed the crime and “*facts* that the suspect is known to use or possess a particular cell phone—together with the reasonable inferences that can be drawn from those facts.” 339 A.3d 1138, 1154–55 (Conn. 2025) (emphasis added). The court then examined the factual basis for attributing the targeted phone to Evans. Because the number was listed as Evans’s contact number with the probation department, the issuing judge had a “reasonable basis” to conclude that he used or possessed the phone. *Id.* at 1155. Combined with probable cause that Evans committed the murder, those facts established probable cause to believe that the targeted phone’s CSLI would contain evidence of the crime. *Id.* at 1155–56.

Massachusetts courts have likewise required the affidavit to include facts connecting the suspect to the targeted phone number. In *Commonwealth v. Hobbs*, the Supreme Judicial Court of Massachusetts held that a substantial basis exists for probable cause when the affidavit establishes both “that a suspect committed a crime”

and “that the suspect was known to own or use a particular cell phone.” 125 N.E.3d 59, 69 (Mass. 2019).

The Massachusetts courts applying that rule have required facts supporting the connection to the phone number. In *Hobbs*, the nexus was established by allegations that the defendant’s brother and former girlfriend both identified a certain cell phone number as one the defendant used. 125 N.E.3d at 70–71. Similarly, in *Commonwealth v. Lavin*, the affidavit alleged that the defendant’s mother provided police with his cell phone number. 191 N.E.3d 293, 315 (Mass. App. Ct. 2022). And in *Commonwealth v. Janvier*, the affidavit alleged that police had been able to contact the defendant by calling that phone number and that the defendant himself provided a second targeted number during booking. 234 N.E.3d 312, 316, 320 (Mass. App. Ct. 2024).

The decision below permits a different rule. The affidavit contained no fact connecting Mr. Pinkerton to the targeted number; it stated only that “[t]hrough the investigation it was learned” that he used it. Pet. App. 40a. Yet the Rhode Island Supreme Court nevertheless held that the totality of the circumstances—principally those implicating Mr. Pinkerton in the crime—permitted the issuing judge to infer that evidence would be found in the number’s location history. *Id.* at 8a–9a.

This decision illustrates the need for guidance from this Court. The courts above require facts connecting the suspect to the targeted phone number as part of the probable-cause showing. The decision below permits that nexus to rest on an officer’s unsupported assertion, so long as the totality of the circumstances supports

probable cause that the suspect committed the crime. This Court should decide which approach the Fourth Amendment requires.

The question is recurring. Requests for historical CSLI are a routine feature of modern law enforcement investigations. T-Mobile alone reported receiving 125,516 requests for historical CSLI in 2025.⁵ Although T-Mobile does not break down which of those are warrants and which are emergency requests, Verizon reported receiving 27,056 warrants for location data just in the second half of 2025, and AT&T reported receiving 27,069 search warrants or probable-cause orders for historical information during the first half of 2026.⁶

The volume of these requests confirms that this question is not an isolated one. Courts will repeatedly confront what must link a phone number to a suspect before the government may obtain a phone number's location data. This Court's guidance is necessary.

B. The decision is wrong.

The affidavit alleged no facts connecting Mr. Pinkerton—or the murder—to the phone number. The affiant's bare conclusion that Mr. Pinkerton used this number was not sufficient to establish probable cause to acquire the CSLI. "Sufficient information must be presented to the magistrate to allow that official to determine

⁵ T-Mobile US, Inc., *Transparency Report for 2025* at 6 (2026), https://www.t-mobile.com/news/_admin/uploads/2026/07/2025-Transparency-Report.pdf.

⁶ Verizon, *U.S. Transparency Report: 2025, 2nd Half* 5 (2026), <https://www.verizon.com/about/sites/default/files/verizon-us-transparency-report-2h-2025.pdf>; AT&T, *Transparency Report* at 3 (Aug. 2026), <https://sustainability.att.com/Media/TransparencyReport-August2026.pdf>.

probable cause; his action cannot be a mere ratification of the bare conclusions of others.” *Gates*, 462 U.S. at 239. No judge could make that independent determination here because there were no facts to assess.

The majority agreed that the affidavit contained only one statement about the 7836 number: “Through the investigation it was learned that Isaiah Pinkerton also utilized the mobile number of 401-771-7836 through the T-Mobile USA Network that was NOT known by the Providence Police initially.” Pet. App. 8a. But it found that the connection to the place to be searched—the particular phone’s CSLI—need not be established by underlying facts. *See id.* at 9a (“As this Court has previously stated, ‘a nexus between the items to be seized and the place to be searched does not rise or fall on direct observations, or, * * * on the existence of underlying facts connecting the two.’” (quoting *Byrne*, 972 A.2d at 642) (alterations in original)). The majority found that even without those facts, the issuing judge “drew reasonable inferences from the affidavit” to determine probable cause for the 7836 number’s records. *Id.* at 8a–9a.

Justice Long’s dissent identified the fundamental problem. There were “no reasonable inferences to draw from the four corners of the affidavit because there were simply no facts that suggested that evidence of the crime would be found in the cell phone records associated with the 7836 number.” *Id.* at 13a. The affidavit did not explain what the police investigation entailed or how it led them to this conclusion. This was not one of the phone numbers Mr. Pinkerton gave to police. There were no identified sources for the number—not even an anonymous source. And there was no

subscriber information, communication, or other fact tying Mr. Pinkerton or the shooting to 7836.

As the dissent explained, the affidavit's treatment of the co-defendant's phone number illustrated what was missing. *Id.* at 14a. The detective identified the phone number that Shawn Mann had given the police and stated that the number appeared in the tower dump from the area and time of the shooting. *Id.* Those facts connected Mr. Mann to the number and the number to the crime. *Id.* By contrast, the detective "did not supply even a single fact connecting the 7836 number either to Mr. Pinkerton or the location and time of the crime." *Id.*

Contrary to the majority's reasoning, the totality of the circumstances cannot make up for this missing factual connection to the place to be searched. The majority relied on *Gates* for the proposition that "a deficiency in one [area of reliability] may be compensated for, in the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id.* at 8a (quoting *Gates*, 462 U.S. at 233). But the dissent correctly explained why this principle could not save this affidavit. The affidavit did "not supply *any* facts to demonstrate the veracity, reliability, basis of knowledge, or any other indicia of reliability upon which the issuing judge could have based a decision." *Id.* at 14a (emphasis added). Without these facts, there could be no fair probability that the CSLI would contain evidence of a crime.

Nor does the detective's experience analyzing phone data supply the missing factual connection. As Justice Long explained, the state's position effectively asked

the court “to take Det. Michael at his word” that his experience in cellular forensics, together with the prevalence of cell-phone use, established the necessary “connection between the 7836 number and Mr. Pinkerton.” *Id.* at 14a. But expertise cannot establish the antecedent fact that Mr. Pinkerton used this particular phone number. Nothing about the detective’s experience explained why police believed that 7836 was associated with Mr. Pinkerton.

Finally, the facts connecting Mr. Pinkerton to the crime could not establish probable cause to search the location information for the 7836 number. This was not an arrest warrant for Mr. Pinkerton. It was a search warrant for CSLI. Probable cause for one is not interchangeable with the other:

The fact that there are grounds amounting to probable cause to make an arrest does not mean that a search warrant could lawfully issue upon that same information. Nor can it be said that probable cause for a search warrant would necessarily justify an arrest. Each requires a showing of probabilities as to somewhat different facts and circumstances

2 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 3.1(b) (6th ed. 2025 Update). Probable cause must relate to what is to be searched or seized. And here, it was not. The decision below was wrong.

C. This issue has significant privacy implications.

Allowing law enforcement to obtain CSLI based on a bare assertion that a phone number belongs to a suspect puts everyone’s location information at risk. As Justice Long stated in her dissent, “[t]he majority’s decision here allows the police and the state to gain access to anyone’s data as long as they baldly represent that their investigation supports doing so.” Pet. App. 15a. Indeed, “[b]ased on the

information contained within Det. Michael’s warrant application, any number could have been swapped out for the 7836 one—including yours or mine.” *Id.* That concern was concrete here: the warrant below actually resulted in the acquisition of historical location information belonging to an individual wholly unconnected to the investigation. *Id.*

This Court has repeatedly recognized individuals’ privacy interest in their location information. In *Carpenter*, this Court recognized that historical location data provides “an intimate window into a person’s life, revealing not only his particular movements, but through them his familial, political, professional, religious, and sexual associations.” 585 U.S. at 311 (quotations omitted). Location data provides the government with a sophisticated, round-the-clock tracker of virtually anyone, over virtually any period of time. “Whoever the suspect turns out to be, he has effectively been tailed every moment of every day for five years” *Id.* at 312.

More recently, in *Chatrue*, this Court emphasized that location information enables police to recreate a person’s movements “with no real effort,” permitting “tireless and absolute surveillance.” 146 S. Ct. at 2208 (quotations omitted). These privacy concerns are not confined to criminal suspects. Indeed, as this Court stated in *Chatrue*, “the newfound tracking capacity’ that CSLI gives the police ‘runs against everyone’—not just those ‘under investigation’—and ‘travel[s] back in time.’” *Id.* at 2207 (quoting *Carpenter*, 585 U.S. at 312).

Those privacy interests make the connection between the suspect and the targeted phone critical. Phone numbers can be reassigned, shared, or otherwise

associated with different people over time. The basis for attributing a phone number to a suspect may be weak, unreliable, or uncorroborated. If an affidavit need not disclose the facts supporting its attribution of a particular number to a suspect, the issuing magistrate has no basis to assess whether there is a fair probability the location history the government seeks will track the suspect.

The real consequences here illustrate the danger. As the dissent was “disturb[ed]” to observe, “the fruits of this warrant revealed extensive data of a private individual not involved whatsoever in this case.” Pet. App. 15a. Nearly three weeks of this person’s detailed geographic movements were also included in the CSLI records introduced by the state at trial, allowing a reviewer to piece together a portrait of this person’s day-to-day life in Rhode Island. *Id.*

This is precisely the type of privacy risk created by the decision below. Without facts supporting the attribution of a phone number to the suspect, the issuing magistrate cannot assess whether the historical location information sought will reveal the movements of the suspect or of someone else. Here, it revealed both. Justice Long’s warning that 7836 could have been anyone’s phone number—and revealed anyone’s historical cell site location information—was borne out by the response to the warrant itself. *Id.* The Fourth Amendment cannot sanction access to such revealing information based on nothing more than an officer’s unsupported assertion.

II. This Court should grant review of the second question.

The decision below contravenes this Court’s consent jurisprudence. And because consent searches are a widespread law enforcement practice, the consequences extend far beyond this case.

A. The decision below conflicts with *Bumper v. North Carolina*.

The decision below conflicts with *Bumper*, which holds that consent cannot be established “by showing no more than acquiescence to a claim of lawful authority.” 391 U.S. at 548–49. Yet the Rhode Island Supreme Court upheld a warrantless DNA search after a detective falsely told Mr. Pinkerton that he was required to submit. This decision permits a court to find consent voluntary based on the totality of the circumstances without considering the officer’s asserted authority. That approach does not square with *Bumper*.

In *Bumper*, law enforcement sought to justify a warrantless search based on consent after telling the homeowner that they had a warrant. 391 U.S. at 546. This Court rejected that argument because the asserted authority to search left no room for a voluntary choice. When an officer claims authority to conduct a search, “he announces in effect that the occupant has no right to resist the search.” *Id.* at 550. A person’s submission in those circumstances is not consent, but “acquiescence to a claim of lawful authority.” *Id.* at 548–50.

Schneckloth did not disturb that rule when it adopted the totality-of-the-circumstances test for voluntary consent. To the contrary, citing *Bumper*, it distinguished voluntary consent from assent “granted only in submission to a claim

of lawful authority.” *Schneckloth*, 412 U.S. at 233. And this Court later reiterated that the government’s burden to establish voluntary consent “is not satisfied by showing a mere submission to a claim of lawful authority.” *Florida v. Royer*, 460 U.S. 491, 497 (1983).

The courts of appeals have likewise recognized that *Bumper* must be given effect within the totality-of-the-circumstances inquiry. Most recently, the D.C. Circuit held that a court commits legal error when it applies that inquiry without accounting for *Bumper*’s rule. *United States v. Glover*, 144 F.4th 336, 341–42 (D.C. Cir. 2025). In evaluating the totality of the circumstances, *Bumper* requires a court to consider whether the purported consent was instead acquiescence to legal authority. *Id.* The “critical fact” is whether the officer communicated that the person had no right to refuse. *Id.* at 341.

Other courts apply *Bumper* the same way. The First Circuit has held that “the totality-of-the-circumstances test . . . require[s] consideration of any evidence that law enforcement officers’ fraud, deceit, trickery or misrepresentation prompted defendant’s acquiescence to the search.” *United States v. Vanvliet*, 542 F.3d 259, 264 (1st Cir. 2008); *see also Pagán-González v. Moreno*, 919 F.3d 582, 596 (1st Cir. 2019) (“[C]ourts have uniformly recognized that the Fourth Amendment may be violated when consent is obtained through a law officer’s false claim of authority . . .”).

The decision below took the opposite approach. It acknowledged the detective’s response when Mr. Pinkerton asked whether he was required to submit to a DNA swab but did not consider whether his submission was acquiescence to the officer’s

representation of authority. Indeed, it did not cite *Bumper* at all, relying on the totality of the circumstances to conclude the consent was voluntary. Pet. App. 10a–12a. In other words, the Rhode Island Supreme Court applied the totality-of-the-circumstances inquiry without accounting for *Bumper*’s rule.

Under *Bumper*, the exchange establishes acquiescence to a claim of lawful authority, not consent. When Mr. Pinkerton asked, “So we all gotta do this?,” the detective responded, “Yeah. The other guys are gonna do it too.” *Id.* at 12a. The detective thus communicated exactly what mattered in *Bumper*: that Mr. Pinkerton had no right to refuse the search.

The timing of the detective’s false statement does not make *Bumper* inapplicable. The majority emphasized that Mr. Pinkerton had expressed a willingness to provide a DNA sample before he asked whether he was required to do so. *Id.* at 10a–11a. But the detective’s statement came before Mr. Pinkerton signed the consent form and before the search occurred, while, as Justice Robinson’s dissent explained, Mr. Pinkerton was “in the process of deciding whether or not he should sign the consent form.” *Id.* at 12a.

The majority’s reliance on the absence of testimony from Mr. Pinkerton underscores the conflict with *Bumper*. The majority reasoned that, without his testimony, it would have to “speculate” whether he interpreted the detective’s statement to mean that “he had to submit to the swab.” *Id.* at 11a. But *Bumper* did not turn on the homeowner’s subjective interpretation of the exchange. It looked to what the officer communicated to the homeowner: that she had “no right to resist.”

Bumper, 391 U.S. at 550. And here no testimony was necessary to determine what the detective communicated. The exchange was captured on video, documenting what Justice Robinson described as the detective’s “unambiguous” and “completely false” response to Mr. Pinkerton’s query. Pet. App. 12a. What is more, *Bumper* placed the burden on the government to prove that consent was “freely and voluntarily given.” 391 U.S. at 548. By requiring evidence from Mr. Pinkerton about how he understood the detective’s claims, the decision below effectively shifts the burden.

Rhode Island’s decision does not square with *Bumper*. *Schneckloth* requires courts to assess voluntariness under the totality of the circumstances, but it preserves *Bumper*’s rule that submission to asserted authority is not voluntary consent. By upholding consent without considering the effect of the officer’s assertion of authority, the decision below fails to give effect to this Court’s precedent.

B. This issue is important.

The question presented affects a routine tool of law enforcement. This Court has recognized that “[c]onsent searches are part of the standard investigatory techniques of law enforcement agencies” and are a “constitutionally permissible and wholly legitimate aspect of effective police activity.” *Schneckloth*, 412 U.S. at 228, 231–32; *see also Fernandez v. California*, 571 U.S. 292, 298 (2014). Indeed, where police have evidence of criminal activity but lack probable cause, a consensual search “may be the only means of obtaining important and reliable evidence.” *Schneckloth*, 412 U.S. at 227. Questions about the validity of consent therefore arise in ordinary police investigations across the country.

That important investigative authority depends, however, on the existence of actual consent. This Court has afforded officers substantial latitude in obtaining consent. They need not have probable cause to search, and they need not advise a person that he has the right to refuse. *Id.* at 227, 231–34. But that latitude rests on an essential premise: the person must voluntarily choose to agree to the search. Thus, while *Schneckloth* held that knowledge of the right to refuse is not a prerequisite to voluntary consent, it reaffirmed *Bumper*’s rule that consent is invalid when it is “granted only in submission to a claim of lawful authority.” *Id.* at 233; see *Bumper*, 391 U.S. at 548–49.

The decision below weakens that constitutional limitation. Although the majority acknowledged the detective’s response to Mr. Pinkerton’s question, it upheld the search under the totality of the circumstances. Under that approach, an officer may tell a person that he must submit to a warrantless search and nevertheless rely on the resulting submission as consent. This creates uncertainty—both for officers and the courts—about the protection *Bumper* provides in the countless encounters in which officers seek consent to search. More fundamentally, it permits the consent exception to swallow the very requirement that makes it constitutional: that consent be freely given.

The consequences are particularly significant when the requested search is a DNA swab. A DNA sample is not ordinary physical evidence. It provides a unique means of identifying an individual and, once obtained, can potentially be used to compare with biological evidence collected in other investigations—potentially for

years to come. *See King*, 569 U.S. at 443, 448. The government’s ability to obtain and use that information makes it especially important that a warrantless DNA sample rests on voluntary consent—not submission to an officer’s assertion that the person has no choice.

This case raises a related concern about the scope of consent. “[T]he scope of a search is generally defined by its expressed object,” and is measured by what a reasonable person would understand the consent to encompass. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991); *see also Walter v. United States*, 447 U.S. 649, 656 (1980). Courts considering consent to the collection or testing of biological material have likewise recognized that the stated purpose of the search may limit the scope of consent. *See State v. Mitcham*, 559 P.3d 1099, 1105–07 (Ariz. 2024), *cert. denied*, 145 S. Ct. 1965 (2025) (holding that use of blood sample to create DNA profile exceeded consent where consent was obtained for the specific purpose of determining alcohol or drug content); *State v. Binner*, 886 P.2d 1056, 1057–58 (Or. Ct. App. 1994) (holding that consent to blood testing for alcohol did not authorize testing the sample for drugs).

Here, the detective told Mr. Pinkerton three times that there was a “burner”—a gun—found in the car when he was pulled over in December 2021. Def.’s Ex. C. at 6–7. And he asked Mr. Pinkerton to provide a buccal swab in reference to that gun. *Id.* at 7. It was only after Mr. Pinkerton signed the consent form that the detective said a gun had been “dumped.” *Id.* at 18. The DNA profile obtained from the swab was then compared not only to DNA from the dumped gun, but DNA from the

discarded satchel that contained it and the bandana in which it had been wrapped. Pet. App. 16a, 40a. But a reasonable person in Mr. Pinkerton's position would not have understood his consent to authorize comparison of the DNA with a different firearm, much less with other items recovered with it.

Given the central role of consent in everyday law enforcement encounters, this question merits review.

III. This case presents a clean vehicle for both questions.

This case is a clean vehicle for resolving both questions presented. Both issues were pressed and ruled upon below, in the trial court and in the Rhode Island Supreme Court, and both were decided on Fourth Amendment grounds.

In addition, both questions arise on undisputed records. The first turns exclusively on the contents of the warrant affidavit. The second turns on a video-recorded police interaction.

Finally, no alternative holding would prevent this Court from reaching either question. The court declined to reach the state's good-faith and harmless-error arguments. Pet. App. 7a & n3.

CONCLUSION

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

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