No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2026

ANTONIO MAURICE GARDNER,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

MOTION FOR LEAVE TO FILE *IN FORMA PAUPERIS*

The Petitioner, Antonio Maurice Gardner, requests leave, pursuant to Rule 39.1 of the Supreme Court Rules, to file the attached Petition for a Writ of Certiorari without prepayment of costs and to proceed *in forma pauperis.*

Petitioner has previously sought and been granted leave to proceed *in forma pauperis* in the following court: The United States District Court for the Western District of Texas.

Undersigned counsel was admitted to practice before the U.S. Supreme Court June 23rd, 2014. Additionally, undersigned counsel has been appointed under the Criminal Justice Act of 1964, 18 USC § 3006A.

Respectfully submitted,

/s/ John A. Kuchera

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2026

ANTONIO MAURICE GARDNER,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented

1. If an experienced law enforcement officer drafts an affidavit in support of a search warrant based on information from a confidential informant, and the affidavit is deficient in that it provides nothing in the way of corroboration as to the informant's information, is that officer protected by the "good faith" exception to the exclusionary rule?

List of Parties

Antonio Maurice Gardner	Petitioner (Defendant/Appellant below)
United States of America	Respondent

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PETITION FOR WRIT OF CERTIORARI

Petitioner Antonio Maurice Gardner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Citation to Opinion Below

The opinion of the United States Court of Appeals for the Fifth Circuit affirming Gardner's conviction and sentence is styled: *United States v. Gardner*, No. 25-50730, 2026 U.S. App. LEXIS 25208 (5th Cir. Aug. 20, 2026).

Jurisdiction

The opinion of the United States Court of Appeals for the Fifth Circuit affirming Gardner's conviction was announced on August 20, 2026 and is attached hereto as Appendix A. Pursuant to Supreme Court Rule 13.3, this Petition has been filed within 90 days of the date of the entry of judgment. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

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

Gardner was charged with possession to distribute methamphetamine. He initially entered a guilty plea but was subsequently allowed to withdraw it. He then filed a motion to suppress, arguing that the evidence seized based on the execution of a search warrant (methamphetamine, Xanax, ecstasy pills, marijuana, drug paraphernalia and a firearm) should be excluded. The motion was eventually denied, following an evidentiary hearing. Gardner again entered a guilty plea but reserved the right to appeal the suppression issue.

Relevant portions of the affidavit in support of the warrant were as follows:

> 4. Affiant has probable cause for the said belief by reason of the following facts, to wit:
>
> Your affiant, James Hickman, is a licensed police officer with the State of Texas and is currently employed by the City of Temple Police Dept, and has been so employed for the last 12 years. Affiant has a total of 12 years of law enforcement experience. Affiant is currently assigned to the Temple narcotics units.
>
> On 10-30-18 and before the making of this affidavit, your affiant received information from a credible and reliable informant, whose identity must remain confidential for

> reasons of his/her own personal safety and well being, that methamphetamine is being kept and possessed at the above described place. Said informant has seen said suspected party in control and possession of said controlled substance in said suspect location within the past (72) hours of this affidavit, 10-30-18.
>
> Said informant is well familiar with and has identified methamphetamine in front of affiant on previous occasions. Your affiant has received information, concerning narcotic activity, from said informant on other occasions and on those occasions informant has been proven to be true and correct.

The magistrate judge who conducted the evidentiary hearing addressed four factors, and determined that, as to three of the factors, the affidavit was deficient:

1. *Whether the informant's statements are against his or her own penal interests.*[1]

   > "[T]he affidavit is devoid of any indication that the informant's statement was against his penal interest[.]"

2. *Whether the information has been corroborated by independent investigation or contemporary observations of police.*

   > "Detective Hickman's affidavit offers only generalized corroboration of the informant's assertions through independent police investigation or observation."

---

[1] *See United States v. Harris*, 403 U.S. 573, 583-84 (1971) ("[T]he informant's admission that over a long period and currently he had been buying illicit liquor on certain premises, *itself and without more,* implicated that property and furnished probable cause to search.").

3. *The degree of detail of the information provided by the informant.*

> "As to the informant's specific knowledge of the scene and drugs involved, this affidavit first offers that the informant reported that 'methamphetamine is being kept and possessed at the above described place.' . . . Unlike the *Smoot* affidavit, this affidavit additionally offers that the informant had 'seen said suspected party in control and possession of said controlled substance in said suspected location.' This addition explicitly ties the residence to the defendant and, more importantly, specific illegal activity at the address."

4. *Whether the informant's reliability is corroborated by something other than unsupported conclusions of the affiant.*

> "Officer Hickman's boilerplate corroboration of the informant's reliability offers weak support for a finding of good faith."

The magistrate nonetheless recommended that the district court deny the motion to suppress based on the good faith exception to the exclusionary rule.

Gardner's argument on appeal was as follows.

The affidavit did not state what form the methamphetamine was in; nor did it state whether there was an amount suggesting personal use, or instead, an amount for distribution. *See United States v. Satterwhite,* 980 F.2d 317, 322 (5th Cir. 1992) (Confidential informant stated he had seen large amounts of cocaine in the apartment and had purchased

cocaine at the apartment); *United States v. Morton,* 46 F.4th 331, 338 (5th Cir. 2022) ("It is a close call whether the evidence recounted in the affidavits established probable cause for drug trafficking as opposed to drug possession.").

The affidavit said nothing about whether the informant's information was against his or her penal interest. *See Satterwhite,* 980 F.2d at 323 (Confidential informant admitted he had previously delivered cocaine to the apartment, implicating himself as a co-conspirator).

The affidavit made no mention of even one controlled buy. *See United States v. Ward,* 967 F.3d 550, 556-67 (6th Cir. 2020); *United States v. Christian,* 925 F.3d 305, 313 (6th Cir. 2019).

The affidavit said nothing about an ongoing police investigation. *See United States v. Huerra,* 884 F.3d 511, 515 (5th Cir. 2018) (San Angelo police had conducted a four-month surveillance operation).

The affidavit said nothing about Officer Hickman's own personal participation in the investigation. *See Satterwhite,* 980 F.2d at 322 ("Agent Hildreth discovered that Satterwhite had six previous arrests

and at least four convictions, including two convictions for possession of dangerous drugs.").

And the unnamed informant in the affidavit did not testify at the evidentiary hearing. *See United States v. Taylor,* 471 F.3d 831, 839 (7th Cir. 2006) (One of the factors to be considered in determining the "reliability, veracity and basis of knowledge" of the informant is whether he or she testified at a probable cause hearing.).

The crux of Gardner's argument was that Officer Hickman did not merely execute the warrant. He also drafted the affidavit in support of the warrant. Because he was an experienced law enforcement officer, he should have known the affidavit was insufficient as to corroboration, and therefore he cannot be said to have drafted the affidavit in good faith.

The Fifth Circuit's response was as follows:

> The affidavit supporting the search warrant did not contain "wholly conclusory statements" and was not bare bones. . . As a result, the good faith exception to the exclusionary rule applies, and the district did not err in denying the motion to suppress.

United States v. Gardner, No. 25-50730, 2026 U.S. App. LEXIS 25208, at *1 (5th Cir. 2026).

First reason for granting the Writ: *The Fifth Circuit opinion is contrary to U.S. Supreme Court case-law, wherein the Court has held that the good faith exception does not necessarily apply to officers who provided information in support of the probable cause determination.*

In *United States v. Leon,* 468 U.S. 897 (1984), wherein the Supreme Court created the good-faith exception to the Fourth Amendment exclusionary rule, the Court noted:

> If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed *only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.* (Emphasis added.)

Id. at 919.

> In the absence of an allegation that the magistrate abandoned his detached and neutral role, suppression is appropriate only if the officers were dishonest or *reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause.* (Emphasis added.)

Id. at 926.

> References to "officer" throughout this opinion should not be read too narrowly. It is necessary to consider the objective reasonableness, *not only of the officers who eventually executed a warrant, but also of the officers who originally obtained it or who provided information material to the probable-cause determination. Nothing in our opinion suggests, for example, that an officer could obtain a warrant on the basis of a "bare bones" affidavit and then rely on*

> *colleagues who are ignorant of the circumstances under which the warrant was obtained to conduct the search.* (Emphasis added.)

Id. at 923 n.24.

The Court reiterated this distinction in *Groh v. Ramirez,* 540 U.S. 551 (2004):

> *[B]ecause petitioner himself prepared the invalid warrant, he may not argue that he reasonably relied on the Magistrate's assurance* that the warrant contained an adequate description of the things to be seized and was therefore valid. (Emphasis added.)

Id. at 564.

Second reason for granting the Writ: *The Supreme Court has made it clear that law enforcement officers have a duty to familiarize themselves with the requirements of the Fourth Amendment.*

The sole purpose of the exclusionary rule is to "deter future Fourth Amendment violations." *Davis v. United States,* 564 U.S. 229, 236-37 (2011). "Responsible law-enforcement officers will take care to learn what is required of them under Fourth Amendment precedent and will conform their conduct to these rules." *Id.* at 241.

> We have already held that "our good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal" in light of "all of the circumstances." . . . These circumstances frequently include a particular officer's knowledge and experience[.]

Herring v. United States, 555 U.S. 135, 145 (2009).

Third reason for granting the Writ: *The Supreme Court has indicated that some form of corroboration is required in the affidavit under a "totality of the circumstances" analysis for an informant's tip to be sufficient to establish probable cause for the issuance of a warrant.*

In *Illinois v. Gates,* 462 U.S. 213 (1983), the search warrant in question was based on a partially corroborated anonymous handwritten note. *Id.* at 217. The note was extremely detailed:

> "This letter is to inform you that you have a couple in your town who strictly make their living on selling drugs. They are Sue and Lance Gates, they live on Greenway, off Bloomingdale Rd. in the condominiums. Most of their buys are done in Florida. Sue his wife drives their car to Florida, where she leaves it to be loaded up with drugs, then Lance flys down and drives it back. Sue flys back after she drops the car off in Florida. May 3 she is driving down there again and Lance will be flying down in a few days to drive it back. At the time Lance drives the car back he has the trunk loaded with over $

> 100,000.00 in drugs. Presently they have over $ 100,000.00 worth of drugs in their basement.
>
> "They brag about the fact they never have to work, and make their entire living on pushers.
>
> "I guarantee if you watch them carefully you will make a big catch. They are friends with some big drug dealers, who visit their house often.

Id. at 225.

The Supreme Court then addressed the issue of whether supplemental information provided in the affidavit might cure the insufficiency, and in so doing modified the *Aguilar-Spinelli* approach:

> The Illinois Supreme Court also properly recognized that Detective Mader's affidavit might be capable of supplementing the anonymous letter with information sufficient to permit a determination of probable cause.

Id. at 227-28.

> Finally, the direction taken by decisions following *Spinelli* poorly serves "[the] most basic function of any government": "to provide for the security of the individual and of his property."
> . . .
> As a result, anonymous tips seldom could survive a rigorous application of either of the *Spinelli* prongs. Yet, such tips, *particularly when supplemented by independent police investigation*, frequently contribute to the solution of otherwise "perfect crimes." While a conscientious assessment of the basis for crediting such tips is required by the Fourth Amendment, a standard that leaves virtually no place for anonymous citizen informants is not. (Emphasis added)

Id. at 237-38.

> For all these reasons, we conclude that it is wiser to abandon the "two-pronged test" established by our decisions in *Aguilar* and *Spinelli*. In its place we reaffirm the totality-of-the-circumstances analysis that traditionally has informed probable-cause determinations.

Id. at 238.

The Court then went on to address the need for and value of independent corroboration of an informant's tip:

> Our decisions applying the totality-of-the-circumstances analysis outlined above have consistently recognized the value of corroboration of details of an informant's tip by independent police work.

Id. at 241.

> Likewise, we recognized the probative value of corroborative efforts of police officials in *Aguilar* – the source of the "two-pronged test" – by observing that *if the police had made some effort to corroborate the informant's report at issue*, "an entirely different case" would have been presented. (Emphasis added.)

Id. at 242.

> Our decision in *Draper* v. *United States*, 358 U.S. 307 (1959), however, is *the classic case on the value of corroborative efforts of police officials.* There, an informant named Hereford reported that Draper would arrive in Denver on a train from Chicago on one of two days, and that he would be carrying a quantity of heroin. The informant also supplied a fairly detailed physical description of Draper, and predicted that he

> would be wearing a light colored raincoat, brown slacks, and black shoes, and would be walking "real fast." . . . Hereford gave no indication of the basis for his information.
>
> On one of the stated dates police officers observed a man matching this description exit a train arriving from Chicago; his attire and luggage matched Hereford's report and he was walking rapidly. We explained in *Draper* that, by this point in his investigation, the arresting officer "had personally verified every facet of the information given him by Hereford except whether petitioner had accomplished his mission and had the three ounces of heroin on his person or in his bag. *And surely, with every other bit of Hereford's information being thus personally verified,* [the officer] had 'reasonable grounds' to believe that the remaining unverified bit of Hereford's information – that Draper would have the heroin with him – was likewise true[.]"
>
> The showing of probable cause in the present case was fully as compelling as that in *Draper*. Even standing alone, *the facts obtained through the independent investigation of Mader and the DEA* at least suggested that the Gateses were involved in drug trafficking. (Emphasis added.)

Id. at 242-43.

> It is enough that there was a fair probability that the writer of the anonymous letter had obtained his entire story either from the Gateses or someone they trusted. *And corroboration of major portions of the letter's predictions provides just this probability.* (Emphasis added.)

Id. at 246.

In *Massachusetts v. Upton*, 466 U.S. 727 (1984), the Supreme Court again pointed out how the circumstances set forth in the affidavit corroborated the informant's information:

> Examined in light of *Gates*, Lieutenant Beland's affidavit provides a substantial basis for the issuance of the warrant. No single piece of evidence in it is conclusive. But the pieces fit neatly together and, so viewed, support the Magistrate's determination that there was "a fair probability that contraband or evidence of a crime" would be found in Upton's motor home. . . . . The informant claimed to have seen the stolen goods and gave a description of them which tallied with the items taken in recent burglaries. She knew of the raid on the motel room – which produced evidence connected to those burglaries – and that the room had been reserved by Kelleher. She explained the connection between Kelleher's motel room and the stolen goods in Upton's motor home. And she provided a motive both for her attempt at anonymity – fear of Upton's retaliation – and for furnishing the information – her recent breakup with Upton and her desire "to burn him."

Id. at 733-34.

In *Alabama v. White*, 496 U.S. 325 (1990), the Court noted that while the *Aguilar-Spinelli* test had been abandoned, "an informant's 'veracity,' 'reliability,' and 'basis of knowledge' -- remain 'highly relevant in determining the value of his report.'" *Id.* at 328-29.

In *Jones* v. *United States*, 362 U.S. 257 (1960), *rev'd on other grounds, United States v. Salvucci*, 448 U.S. 83 (1980), the Court noted:

> In testing the sufficiency of probable cause for an officer's action even without a warrant, we have held that he may rely upon information received through an informant, rather than upon his direct observations, *so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge.* (Emphasis added.)

Id. at 269.

The officer's affidavit stated that he had received information that the day before from a person who claimed to have bought narcotics at a certain apartment, that the defendant was selling narcotics in the apartment. *Id.* at 271. The Court noted: "Had that been all, it might not have been enough[.]" *Id.* The Court further noted however:

> *His story was corroborated by other sources of information.* And petitioner was known by the police to be a user of narcotics. Corroboration through other sources of information reduced the chances of a reckless or prevaricating tale; that petitioner was a known user of narcotics made the charge against him much less subject to scepticism than would be such a charge against one without such a history. (Emphasis added.)

Id.

In *United States v. Harris*, 403 U.S. 573 (1971), the Court addressed the following issue:

> We granted certiorari in this case to consider the recurring question of what showing is constitutionally necessary to satisfy a magistrate that there is a substantial basis for

> crediting the report of an informant known to the police, but not identified to the magistrate, who purports to relate his personal knowledge of criminal activity.

Id. at 575.

> The affidavit in support of the warrant provided as follows:
>
> *Roosevelt Harris has had a reputation with me for over 4 years as being a trafficker of nontaxpaid distilled spirits*, and over this period I have received numerous information [*sic]* from all types of persons as to his activities. *Constable Howard Johnson located a sizeable stash of illicit whiskey in an abandoned house under Harris' control during this period of time.* This date, I have received information from a person who fears for their [*sic*] life and property should their name be revealed. I have interviewed this person, found this person to be a prudent person, and have, under a sworn verbal statement, gained the following information: This person has personal knowledge of *and has purchased illicit whiskey from within the residence described, for a period of more than 2 years, and most recently within the past 2 weeks*, has knowledge of a person who purchased illicit whiskey within the past two days from the house, has personal knowledge that the illicit whiskey is consumed by purchasers in the outbuilding known as and utilized as the "dance hall," and has seen Roosevelt Harris go to the other outbuilding, located about 50 yards from the residence, on numerous occasions, to obtain the whiskey for this person and other persons. (Emphasis added.)

Id. at 575-76.

The Court determined this affidavit to be sufficient because (1) a policeman's knowledge of a suspect's reputation is a "practical consideration of everyday life," (*Id.* at 583) and (2) "[t]he accusation by the informant was plainly a declaration against interest since it could readily warrant a prosecution and could sustain a conviction against the informant himself." *Id.* at 580.

Conclusion

For the foregoing reasons, Petitioner Gardner respectfully urges this Court to grant a writ of certiorari to review the opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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Certificate of Service

This is to certify that a true and correct copy of the above and foregoing Petition for Writ of Certiorari has this day been mailed by the U.S. Postal Service, First Class Mail, to the Solicitor General of the United States, Room 5614, Department of Justice, 10th Street and Constitution Avenue, N.W. Washington, D.C. 20530.

SIGNED this 23rd day of October, 2026.

/s/ John A. Kuchera
John A. Kuchera,
Attorney for Antonio Maurice Gardner

Appendix A

United States v. Gardner

United States Court of Appeals for the Fifth Circuit

August 20, 2026, Filed

No. 25-50730 Summary Calendar

Reporter
2026 U.S. App. LEXIS 25208 *; 2026 LX 447000; 2026 WL 2446309

UNITED STATES OF AMERICA, Plaintiff—Appellee, versus ANTONIO MAURICE GARDNER, Defendant—Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[*1]** Appeal from the United States District Court for the Western District of Texas. USDC No. 6:18-CR-330-1.

United States v. Gardner, 2024 U.S. Dist. LEXIS 148417, 2024 WL 3883512 (W.D. Tex., Aug. 20, 2024)

Disposition: AFFIRMED.

Counsel: For United States of America, Plaintiff - Appellee: Zachary Carl Richter, Assistant U.S. Attorney, U.S. Attorney's Office Western District of Texas, Austin, TX.

For Antonio Maurice Gardner, Defendant - Appellant: John Andrew Kuchera, Waco, TX.

Judges: Before SMITH, SOUTHWICK, and OLDHAM, Circuit Judges.

Opinion

PER CURIAM:[*]

Antonio Maurice Gardner appeals his conviction and sentence for possession with the intent to distribute methamphetamine. He challenges the district court's denial of his motion to suppress and its calculation of his criminal history score. He also raises a claim of ineffective assistance of counsel.

The affidavit supporting the search warrant did not contain "wholly conclusory statements" and was not bare bones. *United States v. Weaver, 171 F.4th 780, 785 (5th Cir. 2026)* (internal quotation marks and citation omitted); *see United States v. McKnight, 953 F.2d 898, 904-05 (5th Cir. 1992)*. As a result, the good faith exception to the exclusionary rule applies, and the district court did not err in denying the motion to suppress. *See Weaver, 171 F.4th at 785*.

[*] This opinion is not designated for publication. *See 5TH CIR. R. 47.5*.

We do not address Gardner's argument that the district court erred in calculating his criminal history score because he waived this objection at sentencing. *See* United States v. Rico, 864 F.3d 381, 383-84 (5th Cir. 2017) **[*2]** . Finally, because the record is not sufficiently developed to allow us to make a fair evaluation of Gardner's ineffective assistance of counsel claim, we decline to consider it without prejudice to collateral review. *See* United States v. Isgar, 739 F.3d 829, 841 (5th Cir. 2014).

AFFIRMED.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See *FED. R. APP. P. 41(b)*. The court may shorten or extend the time by order. See *5TH CIR. R. 41 I.O.P.*

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